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Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia

Report of the Secretary-General

Summary

In his previous report on the Khmer Rouge trials (A/72/341), the Secretary-General identified important progress made in the judicial work across all sets of proceedings before the Extraordinary Chambers in the Courts of Cambodia. The Secretary-General also highlighted the continuing financial challenges facing both the international and national components of the Extraordinary Chambers and requested the approval of a subvention of up to $10.4 million for the year 2018.

By its resolution 72/262 A, the General Assembly authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed $8 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2018, and requested the Secretary-General to report on the use of the commitment authority in the context of the next report.

In the present report, the Secretary-General outlines the judicial progress of the Extraordinary Chambers since the previous report, provides a projection regarding the anticipated use of the commitment authority for 2018, presents information on the proposed budget of the Chambers for 2019 and seeks the approval by the General Assembly of an appropriation for a subvention for the international component of the Chambers in the amount of $9.7 million for 2019.

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I. Introduction

1. Since their establishment, and as detailed in the previous reports of the Secretary-General on the Khmer Rouge trials (A/58/617, A/59/432, A/59/432/Add.1, A/60/565, A/62/304, A/67/380, A/68/532, A/69/536, A/70/403, A/71/338 and A/72/341), the Extraordinary Chambers in the Courts of Cambodia have achieved substantial progress towards fulfilling their mandate. Since the issuance of the previous report of the Secretary-General, all organs of the Extraordinary Chambers have continued to be fully engaged, as trial and judicial investigations are proceeding.

2. Case 001, against Kaing Guek Eav, alias "Duch", was the first case tried before the Extraordinary Chambers. His conviction became final, as varied, by the appeal decision of the Supreme Court Chamber of 3 February 2012. He was sentenced to life imprisonment.

3. Case 002 has been severed into two trials. The first trial, case 002/01, concentrated on alleged crimes against humanity relating to the forced movement of the population from Phnom Penh and later from other regions and the alleged execution of former Khmer Republic soldiers at Tuol Po Chrey. The Trial Chamber pronounced its judgment on 7 August 2014, convicting two surviving senior leaders of the Khmer Rouge regime, Nuon Chea and Khieu Samphan, of crimes against humanity and sentencing them to life imprisonment. Both accused appealed the convictions. On 23 November 2016, the Supreme Court Chamber delivered the judgment on appeals, confirming the charges of crimes against humanity of murder, persecution on political grounds and other inhumane acts, and upholding the sentence of life imprisonment imposed on both accused. A second trial, case 002/02, contains additional charges against Nuon Chea and Khieu Samphan related to genocide of the Muslim Cham and Vietnamese minorities, forced marriage and rape, and treatment of Buddhists, as well as alleged crimes against humanity and war crimes committed at four security centres and three worksites and in a group of work cooperatives located in one administrative district. The trial commenced with opening statements on 17 October 2014. Evidentiary hearings commenced on 8 January 2015 and concluded on 11 January 2017. The Trial Chamber heard closing statements in June 2017, and the trial judgment is anticipated by the fourth quarter of 2018. On 27 February 2017, the Trial Chamber decided to terminate the proceedings with regard to all facts in the closing order of case 002 that were not included in case 002/01 or case 002/02. Case 002/02 will therefore be the last trial in relation to case 002.

4. In cases 003 and 004, significant progress has been made in the judicial investigations. The cases involve allegations against four charged persons. In case 003, Meas Muth was charged in March 2015 and additional charges were laid against him in December 2015. In case 004, Im Chaem and Ao An were formally charged in March 2015. Additional charges against Ao An, including genocide, were announced in March 2016. Yim Tith, the last suspect in case 004, was charged in December 2015. In case 003, the conclusion of the judicial investigation against Meas Muth was notified to the parties by the international co-investigating judge on 10 January 2017. The co-prosecutors filed their final submissions in November 2017. The closing order[1] in this case is expected to be issued by the fourth quarter of 2018. Case 004 has been severed into three cases, one for each charged person, to guarantee the right of the charged persons to be informed of the decision on the charges brought against them without undue delay. In December 2015, the co-investigating judges notified the parties that they had concluded the judicial investigation against Im Chaem.

[1] The closing order will confirm whether there is an indictment or a dismissal of the case. Given the current state of proceedings, it is premature at this point to forecast specific time points in respect of eventual trial milestones.

Subsequently, the charges against her were severed into a new case file, 004/01. On 22 February 2017, the co-investigating judges issued a joint dispositive closing order dismissing the case against Im Chaem because she was not subject to the personal jurisdiction of the Extraordinary Chambers. The closing order with full reasons for dismissal was issued on 10 July 2017. The international co-prosecutor filed appeals against the dismissal. On 29 June 2018, the Pre-Trial Chamber disposed of the appeal on personal jurisdiction, concluding the judicial proceedings in the case. The decision of the co-investigating judges that the Extraordinary Chambers have no jurisdiction over Im Chaem therefore stands. On 16 December 2016, the co-investigating judges notified the conclusion of the judicial investigation against Ao An in case 004 and ordered the severance of the charges against him into a new case file, 004/02. The co-prosecutors filed their final submissions in August 2017. The closing order in this case is expected to be issued by the third quarter of 2018. Case 004 remains the case against Yim Tith. The co-investigating judges notified the parties that they had concluded the judicial investigations against him on 13 June 2017. The co-prosecutors filed their final submissions on 4 June 2018. The closing order in this case is expected to be issued by the second quarter of 2019. In cases 003, 004/02 and 004, at the time of the notification of the conclusion of the investigation, the international co-investigating judge utilized internal rule 66 bis, which was adopted by the Court in January 2015, to reduce the scope of the judicial investigations in these cases. Accordingly, decisions by the co-investigating judges on whether cases 004/02 and 003 will be sent for trial are currently expected to be issued by the third quarter and fourth quarter of 2018, respectively. A decision on whether case 004 will be sent for trial is currently expected to be issued by the second quarter of 2019.

5. Pursuant to the request of the General Assembly in its resolution 68/247 B for a completion strategy, the Extraordinary Chambers prepared a completion plan,[2] highlighting a number of remaining procedural milestones and projecting the timelines required for the judicial completion of the current caseload. The plan is updated on a quarterly basis. Given that no decision has yet been made as to whether any charged person in case 003, case 004/02 and/or case 004 will be indicted and sent for trial, it is difficult to project an overall timeline for the Court's judicial work. Nevertheless, in accordance with the completion plan, it is projected that any appeal proceedings in case 002/02 would run into the third quarter of 2020. The timelines for any additional trial(s) in cases 003, 004/02 and 004 can be projected only when the closing orders indicting or acquitting the charged persons in those cases are issued, on the basis of the number of cases going forward for trial, the number of accused and the scope and complexity of the charges against the accused.

6. The Extraordinary Chambers continue to face considerable financial challenges. It has proved difficult to attract the requisite voluntary funding to fully cover the costs of the international component in 2018. The authorization by the General Assembly of a subvention to supplement the voluntary financial resources of the international component has been essential for the work of the Court, in particular in enabling the continued operation of the Chambers during the first half of 2018. The anticipated level of voluntary contributions to the international component will require the full use of the commitment authority of $8 million by the end of 2018. Regarding the national component, the financial contributions from the Government of Cambodia, coupled with pledges from the international community, have stabilized the funding situation of that component. However, a shortfall in the amount of $251,000 remains for 2018. Given the structure of the Court, if the operation of either the national or the international component is jeopardized, the overall work of the Court is severely impeded.

[2] Revision 17, 30 June 2018. Available at www.eccc.gov.kh/en/about-eccc/finances.

II. Progress made in the case files

A. Case 001: Kaing Guek Eav, alias "Duch"

7. Kaing Guek Eav continues to serve the remainder of his life sentence at Kandal provincial prison, Cambodia.

B. Case 002: Nuon Chea, Ieng Sary, Khieu Samphan, Ieng Thirith

8. On 15 September 2010, the co-investigating judges of the Extraordinary Chambers issued a closing order indicting the former Chair of the Democratic Kampuchea People's National Assembly and Deputy Secretary of the Communist Party of Kampuchea, Nuon Chea, the former Deputy Prime Minister for Foreign Affairs of Democratic Kampuchea, Ieng Sary, the former Head of State of Democratic Kampuchea, Khieu Samphan, and the former Minister of Social Affairs of Democratic Kampuchea, Ieng Thirith, for crimes against humanity, grave breaches of the Geneva Conventions relating to the protection of victims of international armed conflicts and genocide against the Cham and Vietnamese ethnic groups. Ieng Thirith had been found unfit to stand trial on medical grounds and remained under judicial supervision until her death in August 2015 and the subsequent termination of the proceedings. The proceedings against Ieng Sary were also terminated upon his death in March 2013.

9. The charges in case 002 have been severed into two separate cases, styled as cases 002/01 and 002/02, each with a separate trial and judgment. Case 002/01 focused on alleged crimes against humanity relating to the forced movement of the population from Phnom Penh (phase one) and later from the regions (phase two) and the alleged execution of former Khmer Republic soldiers at Tuol Po Chrey. It also considered the structure of Democratic Kampuchea, the history of the Communist Party of Kampuchea, the organizational structure of Democratic Kampuchea and the roles of the accused in relation to the policies of the Democratic Kampuchea regime relevant to all charges. Case 002/02 encompasses charges relating to genocide of the Muslim Cham and Vietnamese minorities, forced marriage and rape, internal purges, treatment of Buddhists and targeting of former Khmer Republic officials, in addition to alleged crimes against humanity and war crimes committed at four security centres (including S-21), three worksites and a number of adjacent work cooperatives. By order of the Supreme Court Chamber of 29 July 2014, further charges not encompassed in the two cases were provisionally stayed pending appropriate disposal by the Trial Chamber. On 27 February 2017, the Trial Chamber issued a decision terminating the proceedings with regard to all facts set out in the case 002 closing order that were not included in either case 002/01 or case 002/02. Consequently, case 002 will be completed upon the final adjudication of case 002/02.

10. On 7 August 2014, the Trial Chamber delivered its judgment in the historic proceedings in case 002/01. It found that Nuon Chea and Khieu Samphan had, through their participation in a joint criminal enterprise, committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during the first phase of the movement of the population; political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during the second phase of the movement of the population; and murder and extermination through executions of Khmer Republic officials at Tuol Po Chrey. They were also found to have planned, instigated, aided and abetted the aforementioned crimes during the movement of the population (phases one and two) and at Tuol Po Chrey. In addition, Nuon Chea was found to have ordered the crimes and to have been responsible as a superior for all crimes committed

in the course of the movement of the population and at Tuol Po Chrey. The Trial Chamber sentenced both Nuon Chea and Khieu Samphan to life imprisonment.

11. In late 2014, appeals were filed against the trial judgment by the co-prosecutors, as well as by both Nuon Chea and Khieu Samphan, who advanced a total of 223 and 148 grounds of appeal, respectively. On 23 November 2016, the Supreme Court Chamber rendered its judgment on appeals. The Supreme Court Chamber upheld convictions for the crimes against humanity of murder, persecution on political grounds and other inhumane acts in relation to the evacuation of Phnom Penh immediately after the fall of the city on 17 April 1975 and reversed the conviction for the crime against humanity of extermination in connection with that event. Regarding the second phase of the population transfers that occurred between 1975 and 1977, the Chamber affirmed the convictions of both accused for the crime against humanity of other inhumane acts, entered a conviction for the crime against humanity of murder and reversed the convictions for the crimes against humanity of extermination and persecution on political grounds. While the Supreme Court Chamber confirmed that at least 250 soldiers and officials of the Khmer Republic had been executed at Tuol Po Chrey in April 1975 and crimes against humanity were likely to have occurred, the evidence was considered to be inadequate to substantiate a finding that there had been a policy to kill all Khmer Republic soldiers. As a result, the Chamber reversed the convictions for the crimes against humanity of extermination, murder and persecution on political grounds at Tuol Po Chrey. The Supreme Court Chamber considered that the imposition of a life sentence upon both Nuon Chea and Khieu Samphan was appropriate and therefore confirmed the sentence imposed by the Trial Chamber. The Supreme Court Chamber also found inadmissible the appeal by the co-prosecutors seeking declaratory relief on the applicability of the most extended form of joint criminal enterprise before the Extraordinary Chambers.

12. The trial in case 002/02 opened on 17 October 2014, with presentation of evidentiary hearings commencing on 8 January 2015. On 11 January 2017, the Trial Chamber concluded the evidentiary hearings, after hearing evidence on the topics of the Tram Kok cooperatives (including the Kraing Ta Chan Security Centre and the treatment of Buddhists), the 1 January Dam worksite, the Kampong Chhnang Airport construction site, the Trapeang Thma Dam worksite, the treatment of the Cham and the Vietnamese, the Au Kanseng, Phnom Kraol and S-21 security centres and internal purges, the regulation of marriage, the nature of the armed conflict and the roles of the accused. The Chamber sat for 274 hearing days, during which it heard the testimony of 114 witnesses, 63 civil parties and 8 experts. The Chamber heard the parties' closing statements between 13 and 23 June 2017. The Trial Chamber has commenced its deliberations, and the trial judgment is expected in the fourth quarter of 2018.

C. Cases 003 and 004

13. On 7 September 2009, the international co-prosecutor filed two introductory submissions (subsequently supplemented by further submissions) with the co-investigating judges alleging the commission of further crimes falling under the jurisdiction of the Extraordinary Chambers by five additional suspects. The crimes under investigation are genocide, crimes against humanity, grave breaches of the Geneva Conventions relating to the protection of victims of international armed conflicts and violations of the 1956 Penal Code of Cambodia. Of the five suspects, four have been charged. One suspect in case 003 died in 2014. In total, 269 field missions and 1,411 witness interviews have been completed with respect to these two cases. No additional field missions are envisaged.

14. Pursuant to submissions filed by the international co-prosecutor, the co-investigating judges were seized of 10 crime scenarios in case 003 and 55 crime scenarios in case 004. Under the internal rules, the co-investigating judges are legally obligated to investigate all crime scenarios of which they have been seized, although they have the authority, at the time of notification of the conclusion of a judicial investigation, to reduce the scope of a case, as long as its remaining facts are representative of the scope of the introductory submission and any supplementary submissions.

15. On 3 March 2015, the then international co-investigating judge charged Meas Muth and Im Chaem in absentia in cases 003 and 004, respectively. Meas Muth was charged with alleged crimes against humanity, war crimes and violations of the 1956 Penal Code of Cambodia, while Im Chaem was charged with alleged crimes against humanity and violations of the 1956 Penal Code of Cambodia. Charging was undertaken in absentia, as the charged persons had ignored formal summonses and ensuing arrest warrants had not been executed. On 27 March 2015, the then international co-investigating judge charged Ao An in person in case 004 with alleged crimes against humanity and violations of the 1956 Penal Code of Cambodia. Following the charging, the charged persons have full access to the case file and can participate in the judicial investigations through their co-lawyers. On 2 June 2015, the co-investigating judges issued a decision dismissing the criminal allegations against Sou Met, until then a suspect in case 003, on account of his death in 2014. On 9 December 2015, the last remaining suspect in case 004, Yim Tith, appeared before the international co-investigating judge. He was charged with genocide, crimes against humanity, war crimes and violations of the 1956 Penal Code of Cambodia. On 14 December 2015, Meas Muth appeared voluntarily before the international co-investigating judge, where he was notified of additional charges, including genocide. A number of charges from the previous decision to charge him in absentia were rescinded, as was the outstanding arrest warrant.

16. On 18 December 2015, the national and international co-investigating judges notified the parties that they considered the judicial investigations against Im Chaem concluded. Noting that Im Chaem has the right to determination of the charges brought against her without undue delay, on 5 February 2016, the co-investigating judges ordered the severance of the proceedings against Im Chaem from case 004 and into a new case file, 004/01. On 14 March 2016, the international co-investigating judge expanded the charges against Ao An to include additional crimes against humanity and genocide. On 16 December 2016, the co-investigating judges notified all parties in cases 004 and 004/01 that they considered the judicial investigation against Ao An to be concluded and ordered the severance of the proceedings from case 004 and the creation of a new case file, 004/02, because the charged person had the right to be informed of the decision on the charges brought against him without undue delay. The international co-investigating judge also issued a separate decision reducing the scope of the investigation pursuant to internal rule 66 bis, constituting the first application of this rule since its adoption in January 2015.

17. On 10 January 2017, the international co-investigating judge notified all parties in case 003 that he considered the judicial investigation against Meas Muth in case 003 to be concluded and issued a separate decision reducing the scope of the judicial investigation pursuant to internal rule 66 bis. The national co-investigating judge reiterated that he had issued a notice of conclusion of the investigation in case 003 on 29 April 2011, followed by a forwarding order on 7 February 2013. On 25 July 2017, the international co-investigating judge forwarded the case file to the co-prosecutors for their final submissions. The co-prosecutors filed their final submissions in November 2017. On 22 February 2017, the co-investigating judges issued a joint dispositive closing order in the proceedings against Im Chaem in case 004/01. They

dismissed the case because, according to their evaluation of the evidence collected during the investigation, Im Chaem is not subject to the personal jurisdiction of the Extraordinary Chambers, as she was neither a senior leader nor otherwise one of the most responsible officials of the Khmer Rouge regime. On 10 July 2017, the co-investigating judges issued the closing order with full reasons for dismissing case 004/01 against Im Chaem. On 9 August 2017, the international co-prosecutor filed his appeals against the closing order with the Pre-Trial Chamber. On 29 June 2018, the Pre-Trial Chamber disposed of the appeal on personal jurisdiction, concluding the judicial proceedings in the case. The decision of the co-investigating judges that the Extraordinary Chambers have no jurisdiction over Im Chaem therefore stands. On 19 May 2017, the co-investigating judges issued a forwarding order requesting the co-prosecutors to file their final submission in case 004/02 against Ao An. On 18 and 21 August 2017, the international and national co-prosecutors filed their respective final submissions. On 13 June 2017, the co-investigating judges notified all parties in cases 004, 004/01 and 004/02 that they considered the judicial investigation against Yim Tith in case 004 to be concluded. The international co-investigating judge issued a separate decision reducing the scope of the judicial investigation pursuant to internal rule 66 bis. The national co-prosecutor filed her final submission on 31 May 2018, while the international co-prosecutor filed his final submission on 4 June 2018.

18. On 8 May 2017, the co-investigating judges released a statement informing the public that they had issued a confidential request for submissions to the parties in cases 003, 004 and 004/02 and to the Office of Administration of the Extraordinary Chambers, in which they had expressed their deep concerns about the funding situation of the Chambers and what it might mean for the future of the cases. The co-investigating judges later informed the public that they had received the submissions and were considering the arguments of the parties and of the Office of Administration regarding the request for submissions on a stay of proceedings and that a decision by the co-investigating judges was no longer expected before 30 June 2017. On 11 August 2017, the co-investigating judges issued their decision. The judges deferred the decision on a stay for the time being, but indicated that they would remain actively seized of the matter until the last closing order had been issued and would take the measures necessary to address the situation should a future lack of funds or financial uncertainty threaten judicial independence, fairness and the integrity of the proceedings. In addition, the judges invited the Office of Administration to report, at least on a quarterly basis, on the status of funding vis-à-vis the approved budget.[3]

19. The projection in cases 004/02 and 003 is that the closing orders containing either a dismissal or an indictment will be issued by the third quarter and fourth quarter of 2018, respectively. The projection in case 004 is that the closing order containing either a dismissal or an indictment will be issued by the second quarter of 2019. Decisions on any potential appeals against the closing orders in cases 004/02, 003 and 004 by the Pre-Trial Chamber are projected to be issued by the second quarter of 2019, the third quarter of 2019 and the first quarter of 2020, respectively.

III. Completion plan and road map: projected timelines

20. Pursuant to the request of the General Assembly for a completion strategy with a clear road map, the Extraordinary Chambers prepared a completion plan that details the remaining work to be completed in the proceedings of which they are currently seized. It is clarified that the current proceedings represent the entire caseload of the

[3] A public version of the decision is available at https://www.eccc.gov.kh/en/document/court/combined-decision-impact-budgetary-situation-cases-003-004-and-0042-and-related.

Chambers, as confirmed by the international co-prosecutor. Assessing each case individually, the plan sets out a road map in which the remaining procedural milestones are highlighted and the timelines required for the judicial completion of the current caseload are projected. The plan was first prepared in March 2014 and subsequently revised on a quarterly basis to reflect the most accurate perspective as the proceedings evolved. It also sets out a series of measures that may assist expeditious completion.

21. On the basis of current projections, the earliest anticipated completion of judicial proceedings in case 002 will be in the fourth quarter of 2018, with the delivery of a trial judgment in case 002/02, absent any appeal. The timing of the final conclusion of judicial proceedings in case 002/02 will depend on the filing of any appeal. The current projections estimate that notices of appeals and appeals against the trial judgment, if any, will be filed in the first quarter of 2019, with the judgment on these potential appeals delivered in the third quarter of 2020, bringing case 002 to a close.

22. In case 004/01, against Im Chaem, a milestone was reached in 2018 with the decision of the Pre-Trial Chamber confirming the dismissal of the case and thereby concluding the judicial proceedings. The following additional milestones are projected to be reached in 2018 in respect of cases 003 and 004/02: the issuance of closing orders in the cases against Meas Muth and Ao An, with a decision of the co-investigating judges to send the case to trial, in whole or in part, or to dismiss the proceedings. In 2019, it is expected that three milestones will be reached: the disposal by the Pre-Trial Chamber of any appeals against the closing orders in the cases relating to Meas Muth and Ao An and the issuance of a closing order in case 004, against Yim Tith, by the co-investigating judges. In 2020, one milestone will be reached with a decision of the Pre-Trial Chamber on any appeals against the closing order in the case against Yim Tith to either confirm or amend the closing order or to dismiss the case. Should any or all of those cases be sent for trial, in whole or in part, projections for trial timelines would then need to be assessed, taking into account the number of cases going forward for trial, the number of accused and the scope and complexity of the charges against the accused.

23. The Secretary-General reaffirms the importance of conducting all judicial proceedings before the Extraordinary Chambers in a manner that conforms to the terms of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Extraordinary Chambers. In this regard, as has been the case with other international and hybrid criminal tribunals, the Secretary-General notes the need to develop, in a timely manner, a framework for the completion of the work of the Chambers and for the performance of any necessary residual functions. Accordingly, the Secretary-General intends to undertake consultations in this regard.

IV. Current financial position and fundraising efforts

24. Previous reports of the Secretary-General have highlighted to Member States the financial challenges faced by the Extraordinary Chambers, which have persisted in 2016, 2017 and 2018. In previous years, the impacts of these challenges have included recruitment freezes and the uncertainty of staff working on month-to-month contracts, with the potential for distraction from the discharge of core functions. National component staff had gone without contracts and salaries for prolonged periods, resulting in, inter alia, a walkout by 100 staff in September 2013. Given the structure of the Chambers, wherein national component and international component staff work side by side, the overall work of the Court was severely impeded by this action.

25. Pursuant to the Agreement between the United Nations and the Royal Government of Cambodia, the United Nations is responsible for defraying the costs of supporting the international component of the Extraordinary Chambers, while the Government of Cambodia is responsible for defraying the costs of the national component, including salaries of national personnel, utilities and service expenses of the Chambers. In its resolution 72/262 A, the General Assembly encouraged all Member States to provide voluntary support for both the international and national components of the Chambers, and requested the Secretary-General to continue his intensive efforts to obtain additional voluntary contributions, including by broadening the donor base, for funding the future activities of the Chambers.

26. **International component.** Historically, funding for the international component of the Extraordinary Chambers has been raised from a limited number of Governments each year, many of which participate in the principal donors group. In 2008, the Secretary-General designated a Special Expert on the United Nations Assistance to the Khmer Rouge Trials to assist in fundraising for the Chambers. Past fundraising activities, including two pledging conferences (in 2010 and 2013), a written appeal from the Secretary-General to all Member States, bilateral requests by senior United Nations officials to donor countries, a written appeal from the then Chair of the principal donors group to permanent missions of Member States in New York in 2015, and the development of a fundraising strategy adopted in 2016 focused on reaching out to potential new donor Governments have been unsuccessful in generating significant new sources of funding.

27. **National component.** In the first years of its operation, the national component was funded largely by voluntary contributions covering 80 per cent of the budget, with the remainder paid by the Government of Cambodia, which also provides in-kind contributions of buildings, facilities and local services. The contribution of the Government has significantly increased over the years and, since 2015, has covered over 60 per cent of the national component's requirements. In response to the serious financial constraints on the national component, intensive efforts were undertaken by the Extraordinary Chambers, together with senior officials of the Government of Cambodia and the Special Expert, as well as Cambodian ambassadors in foreign capitals, to jointly seek support from key Governments for the national component. These efforts resulted in the raising of sufficient funds for the national component in 2016 and 2017 and the majority of the funds required for 2018.

28. **Fundraising efforts in 2018.** The principal donors group, working closely with the Special Expert and Secretariat officials, continued to pursue the financial strategy developed in 2016 to broaden the donor base and to maintain the support of traditional donors. The Secretariat has continued to carry out fundraising efforts through follow-up communications with diplomatic missions on a regular basis. Czechia was invited to join the membership of the group of interested States following its first ever contribution to the Extraordinary Chambers in 2017. Czechia formally accepted the invitation and joined the group of interested States in November 2017. The principal donors group sent a number of letters to prospective new members of the group, inviting them to join. The Republic of Korea formally joined the principal donors group in April 2018 and has been an active participant since then. The Special Expert undertook a number of fundraising activities in the first six months of 2018, including:

(a) Trips to the capitals of traditional donors to brief foreign ministries and European Union officials about the Extraordinary Chambers and seek additional funding;

(b) Visits to a significant number of permanent missions to the United Nations in New York in April 2018 to give briefings about the progress of the Extraordinary Chambers and seek additional funding;

(c) A trip to Phnom Penh with the principal donors group delegation in June 2018. During that week, the Special Expert met with the ambassadors of several countries for fundraising purposes. The Special Expert also took the opportunity to brief the Friends of the Extraordinary Chambers in the Courts of Cambodia diplomatic group about the status of fundraising efforts and appealed for further contributions, including for the national component of the budget. The Special Expert also met with the Deputy Prime Minister of Cambodia, the Chair of the government task force on the proceedings of the Extraordinary Chambers, and other Cambodian officials to obtain the Government's commitment to fund a significant portion of the national component again in 2019.

29. Should the remaining expected contributions be formalized before the end of the year, it is expected that the contributions and the subvention from the regular budget would be sufficient to secure the operations of the international component of the Extraordinary Chambers until the end of the year. The Special Expert continued his efforts to seek further funding for the international component to minimize the drawdown of the regular budget commitment authority approved for 2018. Owing to the voluntary contributions from several donors to the national component of the Chambers, it is almost fully funded for 2018, with $251,000 remaining to be raised to meet the budgetary requirements for the year. At the time of reporting, the Special Expert was addressing that requirement ($251,000) with several Governments. To broaden and maintain the existing donor base, the Secretary-General also intends to send a letter to the permanent missions of States Members of the United Nations seeking their financial support for the Chambers.

30. Despite the combined efforts of the principal donors group, the Secretariat and the Special Expert, voluntary contributions for the international component continued to decline, falling from $17.6 million in 2015 to $13.1 million in 2016 and to $9.5 million in 2017. In view of indications from the current donors, the levels of voluntary contributions for 2018 and 2019 are estimated at $9.7 million (including anticipated pledges of $2.3 million) and $6.3 million, respectively. The estimated income for 2019 consists of $1.7 million in confirmed pledges and $4.6 million in anticipated contributions from members of the principal donors group.

Current financial position and use of the commitment authority

31. The General Assembly approved a commitment authority of $15.5 million for the international component of the Extraordinary Chambers for 2014; these funds, however, were never drawn upon, as voluntary funding eventually covered in full the international component's obligations during 2014. The Assembly again approved commitment authorities for the international component amounting to $12.1 million for 2015, $12.1 million for 2016, $11.0 million for 2017 and $8.0 million for 2018, thus ensuring that the salaries and expenses of personnel could be paid on time and avoiding any disruption in the work of the Chambers.

32. By the end of 2017, $10.6 million in expenditures had been incurred against the amount of $11 million actually appropriated. The unused amount of $0.4 million of the regular budget funds provided to the Extraordinary Chambers in 2017 will be returned to the United Nations.

33. The commitment authority has functioned as a bridging financing mechanism, permitting the United Nations to extend the contracts for international officials and staff at the Extraordinary Chambers, and as a source of funds should voluntary funding fall short. Taking into account the availability of voluntary contributions and

the commitment authority, the United Nations extended staff contracts in four steps in 2017 and has done so in three steps so far in 2018, by one-month, five-month and four-month periods.

34. The group of interested States approved a budget for 2018 amounting to $18.9 million for the international component and $5.7 million for the national component. As at 30 June 2018, voluntary contributions of $4.4 million had been received for the international component for 2018, which, together with the drawdown of an amount of $5.8 million from the commitment authority, covered the expenditures for the first six months of 2018. To meet the operational cash flow requirements of the international component in the latter six months of 2018, taking into account a reduced proposed revised budget of $17.7 million for 2018, a further drawdown on the commitment authority and additional voluntary contributions of $5.3 million are expected. For the national component, as at 30 June 2018, voluntary contributions and pledges of $5.5 million had been received for 2018. The shortfall of $251,000 had not been secured at the time of reporting.

35. Taking into account that the confirmed and anticipated pledges and contributions were not sufficient to meet the budgetary requirements, cost-saving measures have been put in place to achieve cost avoidance for the international component in 2018, through the freezing of recruitment against vacant posts unless hiring is absolutely necessary, cost avoidance and the curtailment of measures in such areas as travel, operating expenses and contractual services. It should be noted that, although the above-mentioned measures will yield some savings, thus ensuring that the available funding is adequate to conduct essential judicial operations, the intermittent cash flow and the short-term extensions of staff contracts have had an impact on staff morale and contributed to staff turnover.

V. Funding requirements of the Extraordinary Chambers for 2019

36. The international component and the national component are funded separately, with the Secretariat being responsible for the receipt and management of voluntary funds for the international component and the Government of Cambodia being responsible for funding the national component, including through contributions from the international community for this purpose. The group of interested States has approved a budget of $16,022,200 for the international component and $5,374,300 for the national component for 2019. The budget was based on projections in June 2017 of judicial activities as reflected in revision 13 of the completion plan. In the most recent revision of the completion plan, revision 17, the projections for the judicial milestones were revised in June 2018 on the basis of the extension for delivery of the Trial Chamber's judgment in case 002/02, the extension for issuance of closing orders in cases 003 and 004 and the consequent extensions in decisions on any appeals on the closing orders.[4] The extension of timelines for the judicial activities has had an impact on the resource requirements for judicial activities in 2018 and 2019. Some resources that were previously planned for 2018 will now be required in 2019. At the time of reporting, the Extraordinary Chambers had reviewed the impact of the most recent completion plan and revised its anticipated budgetary requirements for 2018, as well as prepared a revised budget proposal for 2019 that reflects the revised workplan for 2018 and 2019 and incorporates extended timelines for judicial activities. The revised budget proposal for 2018–2019 is aligned with the

[4] See sect. III above for projected timelines according to revision 17 of the completion plan as at 30 June 2018.

anticipated expenditures for 2018 and resource requirements for 2019 in line with the judicial workplan, as reflected in revision 17 of the completion plan.

37. It should be noted that the revised budget proposal, which is subject to review by the principal donors group and the steering committee and approval by the group of interested States, takes into account the relevant recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its relevant report (A/72/7/Add.7) and endorsed by the General Assembly in resolution 72/262 A. Details of the recommendations and actions taken by the Extraordinary Chambers are provided in annex I.

38. The revised budget proposal for the biennium 2018–2019, as indicated in tables 1 and 2, reflects the resources for the international component, including staff resources, for the operation of the Extraordinary Chambers throughout the biennium. Further details regarding the financial status of the Chambers are provided in annex II.

Table 1
Financial resources for the international component of the Extraordinary Chambers

(Thousands of United States dollars)

	Actual expenditure		*Revised budget*	*Resource growth*		*Revised budget*	*Total revised budget*[a]
Component	*2016*	*2017*	*2018*	*Amount*	*Percentage*	*2019*	*2018–2019*
A. Judicial offices	8 267.5	6 815.6	6 371.7	(911.1)	(14.3)	5 460.6	11 832.3
B. Defence and Victims Support Sections	4 620.6	3 872.1	3 318.1	9.8	0.3	3 327.9	6 646.0
C. Office of Administration	10 660.8	9 405.4	8 023.9	(1 713.9)	(21.4)	6 310.0	14 333.9
D. Provision for cases 003 and 004	–	–	–	915.6	–	915.6	915.6
Total	**23 548.9**	**20 093.1**	**17 713.7**	**(1 699.6)**	**(9.6)**	**16 014.1**	**33 727.8**

[a] 2018–2019 revised budget figures are subject to review and approval by the group of interested States.

Table 2
Post resources for the international component of the Extraordinary Chambers

	Approved		*Revised*[a]	
Category	*2016*	*2017*	*2018*	*2019*
Professional and higher categories				
D-2	12	12	12	11
D-1	1	1	1	1
P-5	7	7	5	4
P-4	18	15	12	11
P-3	38	37	30	18
P-2	6	9	4	6
Subtotal	**82**	**81**	**64**	**51**

Category	Approved		Revised[a]	
	2016	2017	2018	2019
Other levels				
Field Service	23	20	12	11
National Professional Officer	10	11	12	11
Local level[b]	45	46	43	42
Subtotal	**78**	**77**	**67**	**64**
Total	**160**	**158**	**131**	**115**

[a] 2018–2019 revised budget figures are subject to review and approval by the group of interested States.

[b] Referred to as "General Service" in previous reports. The change in category is a result of alignment with the category-naming convention used by the Economic and Social Commission for Asia and the Pacific.

39. In 2019, resource requirements in the amount of $16,014,100 would provide for 115 positions (11 D-2, 1 D-1, 4 P-5, 11 P-4, 18 P-3, 6 P-2, 11 Field Service, 11 National Professional Officer and 42 Local level), representing a reduction of 16 posts compared with the 2018 requirements, and for such non-post items as non-staff compensation, other staff costs, consultants and experts, travel of staff, travel of witnesses, contractual services, general operating expenses, supplies and furniture and equipment.

40. For 2019, the total funding requirements for both the national and international components are estimated at $21,388,300 ($16,014,100 for the international component and $5,374,200 for the national component). On the international side, at the time of reporting, the Secretariat had received pledges in the amount of $1.7 million, with anticipated pledges amounting to $4.6 million for 2019 on the basis of indications from the traditional donors. Given the pattern of contributions in the period 2017–2018, it is expected that resources will be pledged in piecemeal and varied amounts, with insufficient fund balances available at any given time to ensure the reasonable duration of staff contracts. The operational reserve of $4.2 million that had accumulated since the inception of the Extraordinary Chambers was fully depleted in 2012 to meet staff payroll costs and remains at zero. With continuing shortfalls in voluntary contributions, the Secretariat has been unable to reinstate any reserve, and thus has no funding mechanism to address unforeseen operational contingencies.

41. To address the above-mentioned situation, the Secretary-General is proposing a subvention of $9.7 million for the international component for 2019. The level of the requested subvention takes into account the proposed revised budget for 2019, the estimated voluntary contributions of $6.3 million in 2019 and the fact that voluntary funds raised from Governments have continued to fall short of overall budgetary needs. The level of the requested subvention reflects the financial resources necessary to secure the operation of the Extraordinary Chambers during 2019, with the assumption that the revised budget for 2019 would be approved by the group of interested States. Should the proposed budget be approved at a different level, updated information on any adjustments to the budget or the consequent adjustment to the proposed level of subvention will be provided to the General Assembly. The proposed subvention will allow for the continued operation of the Chambers, pending the receipt of additional voluntary contributions necessary for their operation throughout the year. The Secretary-General proposes that the subvention be available to be drawn upon should the extrabudgetary funds on hand be insufficient to meet the international

component's salary and operational costs. Cognizant of the difficulties of securing funds through voluntary contributions, and the need to ensure the expeditious completion of the remaining cases, the Secretary-General will continue his intensive fundraising efforts. Given the financial situation of the Chambers, the Secretary-General proposes a subvention to be appropriated so as not to affect negatively the cash flow of the Organization and to enable the issuance of staff contracts of a reasonable duration. Intensive fundraising efforts will be continued given the voluntary nature of the funding arrangement.

42. Despite the improvement in the situation of the national component in recent years, the timing of contributions remains an important factor and the overall funding remains uncertain in 2019 and beyond. While the Government of Cambodia is responsible under the Agreement with the United Nations to raise funding for the entire national component, the provision by the Government of $4.1 million in 2015, $4.2 million in 2016, $4.2 million in 2017 and $4 million in 2018 represents a significant increase compared with previous years. The Government has reiterated its strong commitment to the ongoing process of the Extraordinary Chambers and to addressing its funding challenges. The United Nations will also continue to support the Government in seeking to obtain additional voluntary contributions from the international community for the national component. As in previous years, any funding shortfall on either side is likely to seriously affect the activities of the Chambers as a whole.

VI. End-of-service liabilities for judges, prosecutor and staff

43. The financial situation of the Extraordinary Chambers remains precarious. At the time of reporting, the staff contracts had been extended only until 31 October 2018, pending the receipt of expected contributions to cover requirements for the remainder of the year. The proposed budget for 2019 assumes the continued operation of the Court and provides for end-of-service payments due to staff and international judges who are expected to separate during 2019, to the extent that full funding is made available.

44. Should full funding not be available in 2019, the extension of contracts/appointments for continuing staff, judges and the prosecutor would not be possible. Existing contracts/appointments would be allowed to expire according to their terms and conditions, which would mean that additional liabilities would not be provided for in the proposed 2019 budget. These liabilities include entitlements and benefits payable upon separation, such as repatriation travel and shipment or relocation grant for judges and staff, and termination indemnity and commutation of unused annual leave for international and locally recruited staff. For the international component, these are currently estimated at $1,838,200 ($505,300 for judges and the prosecutor and $1,332,900 for staff members). This amount does not include any costs required for the proper and orderly closure of operations, should the need arise.

45. As indicated above, the operational reserve was depleted in 2012 to meet payroll expenses at that time owing to shortfalls in voluntary contributions. The terms of the use of the subvention have not allowed the rebuilding of any reserves to meet end-of-service liabilities. For this reason, the Secretary-General requests that the General Assembly allow the full drawdown of the subventions and the retention of the unutilized portion of the voluntary contributions received, if any, for the international component for the purpose of rebuilding an operational reserve for the Extraordinary Chambers.

VII. Conclusions

46. The Secretary-General welcomes the important progress made by the Extraordinary Chambers across all sets of current proceedings in the year since the issuance of his previous report. In this context, and bearing in mind the essential mandate of the Chambers, the Secretary-General notes the continuing importance of conducting all judicial proceedings before the Chambers in a manner that conforms to the terms of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Extraordinary Chambers.

47. Following the judgments in cases 001 and 002/01, the landmark trial in case 002/02 has made substantial progress and the trial judgment is expected in the last quarter of 2018. Judicial investigations in cases 003 and 004 have reached key milestones with the disposal by the Pre-Trial Chamber of the co-prosecutor's appeal against the closing order in the case against Im Chaem in case 004/01, the closing of those judicial proceedings as well as the closing orders expected by the end of 2018 in cases 003 and 004/02, and final submissions by the co-prosecutors in case 004.

48. The Secretary-General commends the judicial officials and staff of both components of the Extraordinary Chambers for their sustained commitment and dedication in fulfilling the challenging but essential mandate of the Chambers.

49. The Secretary-General welcomes the provision of the majority of the funding of the national component by the Government of Cambodia in 2015, 2016, 2017 and 2018 and acknowledges the commitment to the success of the Extraordinary Chambers shown by the Government. At the same time, the Secretary-General is concerned that the Chambers face persisting financial challenges, and that voluntary funds raised from Governments have continued to fall short of overall budgetary needs during the past four years. It remains clear that the current funding mechanisms of the Chambers are not sustainable without additional assistance over the long term. The Secretary-General also notes the need to develop a framework for the completion of the work of the Chambers and for the performance of any necessary residual functions, and intends to undertake consultations in this regard.

50. It remains critical that the international community ensure that the Extraordinary Chambers have the necessary financial means to ensure full accountability, within the scope of their mandate, for the crimes perpetrated during the former Khmer Rouge regime. A financial failure of the Chambers would constitute a renewed tragedy in the quest for justice of the people of Cambodia, who have waited four decades for these efforts to reach belated fruition, and would constitute a serious setback to the international community's fight against impunity.

VIII. Recommendations

51. The Secretary-General requests the General Assembly:

(a) To take note of the present report and the use of the commitment authority approved for 2018;

(b) To take note of the resource requirements of the Extraordinary Chambers for the period from 1 January to 31 December 2019, estimated at $16,014,100 for the international component of the Chambers to continue to fulfil its judicial mandate;

(c) To appropriate an amount of $9,746,200 by way of subvention for 2019 for the international component of the Extraordinary Chambers under the proposed programme budget for the biennium 2018–2019;

(d) To approve the full drawdown of the commitment authority and allow the retention of the unutilized portion of voluntary contributions, if any, at the end of each fiscal year, starting in 2018, to rebuild the operational reserve of the Extraordinary Chambers.

Annex I

Summary of follow-up action taken to implement relevant recommendations

Brief description of the recommendation	*Action taken or to be taken to implement the recommendation*
Report of the Advisory Committee on Administrative and Budgetary Questions (A/72/7/Add.7)	
The Advisory Committee stresses the need to take all necessary measures to expedite case completion, including for more effective planning to meet the completion milestones, while fully respecting the judicial process (see also A/71/550, para. 10). The Committee notes the progress made in the current judicial proceedings and stresses again the importance of the regular updates to the comprehensive completion plan. Once again, the Committee notes that the revised plan now foresees judicial activity for several years beyond the current financial period and notes with concern the potential financial implications of the timeline (para. 12).	The Extraordinary Chambers are taking all available measures to expedite the completion of their mandate and manage available resources diligently to ensure cost-efficiency, while respecting the independent nature of the judicial process and adhering to all statutory requirements. In addition to the statutory framework, the work of the Chambers is directed by the substantive developments in the cases before them, which are often initiated by legally independent parties to the cases. The projection of a timeline is based on information available to the Chambers at a given time, what the known workload is and how it is to progress going forward. The projection will need adjustments when the work progresses in a manner different from that first stipulated, often owing to deviating requirements subsequently presented by the parties in the case. The projected timelines are adjusted if and when available information changes. Committed to efficiency and transparency in their projections, the Chambers assess their work progress quarterly and adjust the projections as required by the substantive developments in the respective cases. These revised projections are subsequently reflected in the quarterly updates of the completion plan of the Chambers. Since the issuance of the previous report of the Secretary-General, the Extraordinary Chambers have made substantive progress in all cases. Appeals against the closing order in case 004/01 were disposed of by the Pre-Trial Chamber in June 2018 by upholding a decision of the co-investigating judges to dismiss the charges in the case and thereby ending all related judicial proceedings. The trial judgment in case 002/02 is expected in the last quarter of the year, while closing orders in cases under investigation, styled as cases 004/02, 003 and 004, are expected in the third quarter and fourth quarter of 2018 and the second quarter of 2019, respectively. Refer to section III ("Completion plan and road map: projected timelines") of the main report for a more detailed description of the timelines.
The Advisory Committee recommends that the General Assembly request the Secretary-General to discontinue as soon as possible the current practice of providing the international judges with a net remuneration in the amount of a gross remuneration (para. 17).	The Office of Human Resources Management has finalized the proposed revisions to the compensation and other terms and conditions of the appointments of the international judges and prosecutor which will address this recommendation.

Brief description of the recommendation	*Action taken or to be taken to implement the recommendation*
	The revised terms and conditions will be shared with the international judges and prosecutor for their comments before they are submitted to the group of interested States for approval. Under the current framework, a change to the remuneration levels of the international judges and prosecutor would have been due on 1 January 2018. No changes have been implemented pending the approval of the revised terms and conditions of their service.
While welcoming the cost-saving measures taken by the Extraordinary Chambers, the Advisory Committee considers that the posts that are not required for the completion of the Extraordinary Chambers mandate should be abolished (para. 20).	Taking into account that the voluntary contributions pledged and received were not sufficient to meet the budgetary requirements, measures were put in place to avoid or defer the incurring of costs for the international component in 2018, including imposing a recruitment freeze against vacant posts unless they have a direct impact on the judicial process and strictly curtailing expenses in such areas as travel, operating costs and contractual services. This recruitment freeze is, however, the result of the financial situation of the Extraordinary Chambers rather than an indication that certain positions are no longer needed. Nevertheless, it should be noted that 27 positions under the international component that are no longer required for the completion of the mandate of the Chambers have been abolished in 2018. A further 16 positions are proposed for abolishment in the 2019 budget.
The Advisory Committee notes the commitments made by the Government of Cambodia to meeting the terms of its Agreement with the United Nations. The Committee trusts that the Secretary-General will continue to actively engage with the relevant authorities of the Government to ensure that the obligations arising from the terms of the Agreement are met (para. 22).	In keeping with prior practice, the Secretary-General intends to write to the Government of Cambodia seeking the support of the Government for both the subvention for 2019 and the funding of the national component of the Extraordinary Chambers in 2019.
In view of the persistent funding challenges faced by the Extraordinary Chambers, the Advisory Committee trusts that the intensified fundraising efforts of the Secretary-General will yield results, including by broadening the donor base for the Chambers, so that their work can be brought to a successful conclusion (para. 27).	Refer to paragraph 28 of the main report for a detailed description of the fundraising efforts undertaken in 2018.
The Advisory Committee encourages the Extraordinary Chambers to exercise restraint and to use external contractors and consultants judiciously without prejudice to the requisite caseload requirements for translation, transcription and interpretation. The Committee expects that the Chambers will undertake	The Extraordinary Chambers made all efforts to exercise budgetary discipline and identify operational efficiencies. A freeze was imposed on all vacant positions except for the ones deemed critical to directly supporting the judicial process. In the revised budget for 2019, all seven in-house translator positions are proposed for abolishment and the translation work is to

Brief description of the recommendation	*Action taken or to be taken to implement the recommendation*
all efforts to exercise budgetary discipline and identify operational efficiencies in this regard (para. 29).	be outsourced to individual or institutional contractors. The contractors will be engaged if and when required for translation, transcription or interpretation, and will be paid on the basis of output delivery, as opposed to time spent on the job. This is expected to achieve operational efficiencies by eliminating costs during off-peak workload periods.
The Advisory Committee notes that the requirement for furniture and equipment amounted to $210,400 in 2017. Considering that the staff complement of the Extraordinary Chambers would be reduced by 27 posts from 2017 to 2018, the Committee is of the view that the requirement for furniture and equipment in 2018 should be adjusted to the level of 2017 (para. 31).	Following the approval of the 2018–2019 budget by the group of interested States, the 2018 budgetary requirement for furniture and equipment was reduced to $210,400, as recommended by the Advisory Committee. It is expected to be further reduced to $180,100 in line with the revised 2018 requirements, subject to approval by the group of interested States.
The Advisory Committee again notes that, after five consecutive requests since 2013 for subventions to support the international component of the Extraordinary Chambers, the practice is in fact no longer exceptional in nature. Nevertheless, the Committee considers that voluntary contributions should remain the major source of funding for the Chambers and that continued reliance on the subvention should be avoided (para. 34).	Despite the combined efforts of the principal donors group, the Secretariat and the Special Expert, voluntary contributions for the international component continued to decline, from $17.6 million in 2015 to $13.1 million in 2016 and to $9.5 million in 2017, with an anticipated slight increase to $9.7 million in 2018. In recent years, voluntary contributions have continuously fallen short of meeting the budgetary requirements of the international component of the Extraordinary Chambers without the support of the regular budget subvention. While the intensive fundraising efforts continued in 2018, in view of the trend referred to above and indications from the current donors, the level of voluntary contributions is anticipated to decline further to about $6.3 million in 2019.

Annex II

Financial status of the Extraordinary Chambers in the Courts of Cambodia

International component: United Nations Assistance to the Khmer Rouge Trials

Table A.1
Financial status of the international component as at 31 December 2017

(Thousands of United States dollars)

A. Income	
Contributions received from 2005 to 2017	207 704.2
Interest earned from 2005 to 2017 and other adjustments	4 956.9
Subtotal	**212 661.1**
B. Expenditure[a]	(244 366.1)
Fund balance (shortfall)[b]	**(31 705.0)**

[a] Figures include a grant of $3,255,000 in 2013 and loans of $780,000 in 2014 to the national component to cover salary costs. These costs are also reflected in the national component tables.
[b] The shortfall was covered by the regular budget subvention for 2015 ($10,678,400), 2016 ($10,407,700) and 2017 ($10,619,000).

Table A.2
Financial status of the international component for 2018 and projection for 2019

(Thousands of United States dollars)

A. Income for 2018	
Contributions received for 2018	4 354.4
Outstanding pledges for 2018[a]	3 060.7
Anticipated pledges for 2018	2 300.0
Subtotal	**9 715.1**
B. Revised budget for 2018[b]	**(17 713.7)**
C. Estimated shortfall for 2018	**(7 998.6)**
D. Income for 2019	
Outstanding pledges for 2019[c]	1 690.9
Anticipated pledges for 2019	4 577.0
Subtotal	**6 267.9**
E. Estimated requirements for 2019[b]	**(16 014.1)**
F. Estimated shortfall for 2019	**(9 746.2)**

[a] European Union (€2,250,000 revalued as at 30 June 2018), Finland (€90,000 revalued as at 30 June 2018), Germany ((€50,000 revalued as at 30 June 2018) and United Kingdom of Great Britain and Northern Ireland (£225,000 revalued as at 30 June 2018).
[b] 2018–2019 revised budget figures are subject to review and approval by the group of interested States.
[c] Sweden (SKr 10,000,000 revalued as at 30 June 2018) and Germany (€500,000 revalued as at 30 June 2018).

Indicative resource requirements for the United Nations Assistance to the Khmer Rouge Trials

Table A.3.1
Requirements by component and funding availability, international component

(Thousands of United States dollars)

Component	Actual expenditure 2016	Actual expenditure 2017	Revised budget 2018	Resource growth Amount	Resource growth Percentage	Revised budget 2019	Total revised budget[a] 2018–2019
A. Judicial offices	8 267.5	6 815.6	6 371.7	(911.1)	(14.3)	5 460.6	11 832.3
B. Defence and Victims Support Sections	4 620.6	3 872.1	3 318.1	9.8	0.3	3 327.9	6 646.0
C. Office of Administration	10 660.8	9 405.4	8 023.9	(1 713.9)	(21.4)	6 310.0	14 333.9
D. Provision for cases 003 and 004	–	–	–	915.6	–	915.6	915.6
Total expenditure	**23 548.9**	**20 093.1**	**17 713.7**	**(1 699.6)**	**(9.6)**	**16 014.1**	**33 727.8**
Balance brought forward	–	–	–	–	–	–	–
Pledges and contributions	13 141.2	9 474.1	9 715.1	(3 447.2)	(35.5)	6 267.9	15 983.0
Total income	**13 141.2**	**9 474.1**	**9 715.1**	**(3 447.2)**	**(35.5)**	**6 267.9**	**15 983.0**
Surplus/(shortfall)	**(10 407.7)**	**(10 619.0)**	**(7 998.6)**	**(1 747.6)**	**21.8**	**(9 746.2)**	**(17 744.8)**

[a] 2018–2019 revised budget figures are subject to review and approval by the group of interested States.

Table A.3.2
Requirements by object of expenditure and funding availability, international component

(Thousands of United States dollars)

Object of expenditure	Actual expenditure 2016	Actual expenditure 2017	Revised budget 2018	Resource growth Amount	Resource growth Percentage	Revised budget 2019	Total revised budget[a] 2018–2019
Posts	14 126.7	12 437.1	9 953.8	(1 389.3)	(14.0)	8 564.5	18 518.3
Non-staff compensation	2 003.8	1 952.1	2 011.0	(99.9)	(5.0)	1 911.1	3 922.1
Other staff costs	100.4	–	202.5	558.7	275.9	761.2	963.7
Consultants and experts	5 497.6	4 682.5	3 910.0	(610.9)	(15.6)	3 299.1	7 209.1
Travel of staff	80.8	36.4	33.9	16.9	49.9	50.8	84.7
Travel of witnesses	48.3	5.6	1.2	28.3	2 358.3	29.5	30.7
Contractual services	802.0	412.8	1 059.0	(240.0)	(22.7)	819.0	1 878.0
General operating expenses	343.0	270.9	255.8	(18.6)	(7.3)	237.2	493.0
Supplies	203.2	94.1	106.4	(6.3)	(5.9)	100.1	206.5
Furniture and equipment	343.1	201.6	180.1	61.5	34.1	241.6	421.7
Total expenditure	**23 548.9**	**20 093.1**	**17 713.7**	**(1 699.6)**	**(9.6)**	**16 014.1**	**33 727.8**

Object of expenditure	Actual expenditure 2016	Actual expenditure 2017	Revised budget 2018	Resource growth Amount	Resource growth Percentage	Revised budget 2019	Total revised budget[a] 2018–2019
Balance brought forward	–	–	–	–	–	–	–
Pledges and contributions	13 141.2	9 474.1	9 715.1	(3 447.2)	(35.5)	6 267.9	15 983.0
Total income	**13 141.2**	**9 474.1**	**9 715.1**	**(3 447.2)**	**(35.5)**	**6 267.9**	**15 983.0**
Surplus/(shortfall)	**(10 407.7)**	**(10 619.0)**	**(7 998.6)**	**(1 747.6)**	**21.8**	**(9 746.2)**	**(17 744.8)**

[a] 2018–2019 revised budget figures are subject to review and approval by the group of interested States.

National component: Cambodia

Table A.4
Financial status of the national component as at 31 December 2017

(Thousands of United States dollars)

A. Income	
Contributions received from 2005 to 2017	74 609.3
B. Expenditure	(74 520.0)
Fund balance	**89.3**

Table A.5
Financial status of the national component for 2018 and the projection for 2019

(Thousands of United States dollars)

A. Income for 2018	
Cash balance brought forward as at 1 January 2018	89.3
Contributions received for 2018	3 301.8
Outstanding pledges for 2018[a]	2 055.7
Anticipated pledges for 2018	–
Subtotal	**5 446.8**
B. Revised budget for 2018	**(5 697.8)**
C. Estimated shortfall for 2018	**(251.0)**
D. Income for 2019	
Outstanding pledges for 2019	–
Anticipated pledges for 2019	–
Subtotal	**–**
E. Estimated requirements for 2019	**5 374.2**
F. Estimated shortfall for 2019	**(5 374.2)**

[a] €1,250,000 from the European Union (inclusive of United Nations Office for Project Services programme support costs) and $825,000 from the Government of Cambodia.

Indicative resource requirements for the national component

Table A.6.1
Requirements by component and funding availability

(Thousands of United States dollars)

Component	Actual expenditure 2016	Actual expenditure 2017	Revised budget 2018	Resource growth Amount	Resource growth Percentage	Revised budget 2019	Total revised budget[a] 2018–2019
A. Judicial offices	1 725.4	1 445.0	1 358.5	(367.6)	(27.1)	990.9	2 349.4
B. Defence and Victims Support Sections	459.8	325.3	329.0	2.3	0.7	331.3	660.3
C. Office of Administration	4 366.1	4 059.4	4 010.3	(79.8)	(2.0)	3 930.5	7 940.8
D. Provision for cases 003 and 004	–	–	–	121.5	–	121.5	121.5
Total expenditure	**6 551.3**	**5 829.7**	**5 697.8**	**(323.6)**	**(5.7)**	**5 374.2**	**11 072.0**
Balance brought forward	85.0	38.7	89.3	(89.3)	(100)	–	89.3
Pledges and contributions	6 505.0	5 880.3	5 357.5	(5 357.5)	(100)	–	5 357.5
Total income	**6 590.0**	**5 919.0**	**5 446.8**	**(5 446.8)**	**(100)**	**–**	**5 446.8**
Surplus/(shortfall)	**38.7**	**89.3**	**(251.0)**	**(5 123.2)**	**2 041.1**	**(5 374.2)**	**(5 625.2)**

[a] 2018–2019 revised budget figures are subject to approval by the group of interested States.

Table A.6.2
Post requirements

Category	Approved 2016	Approved 2017	Revised[a] 2018	Revised[a] 2019
Professional and higher categories				
D-1	15	15	12	13
P-5	1	1	1	1
NPO-D	22	22	20	19
NPO-C	17	16	16	11
NPO-B/NPO-A	19	19	16	16
Subtotal	**74**	**73**	**65**	**60**
Other levels				
Local level	111	110	90	85
Subtotal	**111**	**110**	**90**	**85**
Total	**185**	**183**	**155**	**145**

Abbreviation: NPO, National Professional Officer (A, B, C and D reflect levels within the category).

[a] 2018–2019 revised budget figures are subject to approval by the group of interested States.

Table A.6.3
Requirements by object of expenditure and funding availability

	Actual expenditure		*Revised budget*	*Resource growth*		*Revised budget*	*Total revised budget*[a]
Object of expenditure	*2016*	*2017*	*2018*	*Amount*	*Percentage*	*2019*	*2018–2019*
Posts	3 253.8	3 002.7	2 942.9	(238.8)	(8.1)	2 704.1	5 647.0
Non-staff compensation	902.1	699.1	681.4	(72.5)	(10.6)	608.9	1 290.3
Other staff costs	314.7	217.2	201.1	21.5	10.7	222.6	423.7
Consultants and experts	141.7	107.2	107.2	34.5	32.2	141.7	248.9
Travel of staff	48.8	20.6	19.6	2.0	10.2	21.6	41.2
Contractual services	1 313.6	1 267.9	1 124.7	(3.2)	(0.3)	1 121.5	2 246.2
General operating expenses	442.3	397.1	444.9	(21.9)	(4.9)	423.0	867.9
Hospitality	26.6	34.4	27.2	–	–	27.2	54.4
Premises alternation	52.6	82.3	95.7	(39.2)	(41.0)	56.5	152.2
Training and meeting	55.1	1.2	53.1	(6.0)	(11.3)	47.1	100.2
Total expenditure	**6 551.3**	**5 829.7**	**5 697.8**	**(323.6)**	**(5.7)**	**5 374.2**	**11 072.0**
Balance brought forward	85.0	38.7	89.3	(89.3)	(100)	–	89.3
Pledges and contributions	6 505.0	5 880.3	5 357.5	(5 357.5)	(100)	–	5 357.5
Total income	**6 590.0**	**5 919.0**	**5 446.8**	**(5 446.8)**	**(100)**	**–**	**5 446.8**
Surplus/(shortfall)	**38.7**	**89.3**	**(251.0)**	**(5 123.2)**	**2 041.1**	**(5 374.2)**	**(5 625.2)**

[a] 2018–2019 revised budget figures are subject to approval by the group of interested States.

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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Myanmar

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the situation of human rights in Myanmar, Yanghee Lee, submitted in accordance with Human Rights Council resolution 37/32.

* A/73/150.

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Report of the Special Rapporteur on the situation of human rights in Myanmar

Summary

The present report provides an overview of human rights developments and challenges in Myanmar. It contains recommendations to address them, including the establishment of an accountability mechanism proposed by the Special Rapporteur.

I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 37/32, covers developments in Myanmar since the previous report of the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, to the Human Rights Council in March 2018 (A/HRC/37/70) and oral update presented to the Council in June 2018.

2. The Special Rapporteur notes that executing the mandate and fulfilling the responsibilities entrusted to her by the Council have been extremely difficult owing to the continued denial of access to her by the Government of Myanmar. In preparation for the present report, the Special Rapporteur made a request to visit India in order to meet refugees from Myanmar who are present there. She received no response from the Government of India.[1]

3. As a result, the Special Rapporteur undertook a visit to Dhaka and Cox's Bazar, in Bangladesh, from 29 June to 8 July 2018. She held intensive discussions with government officials, the representatives of United Nations agencies, humanitarian actors and the diplomatic community. In Cox's Bazar, she visited the refugee camps and "no man's land" to meet refugees and civil society representatives. She held teleconferences with members of the United Nations country team in Myanmar and non-governmental organizations (NGOs), experts, human rights defenders and victims of human rights violations in Myanmar. She also held teleconferences with refugees from Myanmar in India and civil society representatives working on refugee matters there. She continues to seek opportunities for dialogue with the Government of Myanmar; following her mission, she sent a list of questions to which she has not yet received a response.[2]

II. Shrinking democratic space

4. Democratic space in Myanmar today continues to shrink and is characterized by declining media freedom, increasing intimidation and harassment of those who speak out in favour of human rights and against injustices and an enveloping culture of silence and self-censorship. A survey of 200 journalists in Myanmar published in March 2018 indicated that they believe that media freedom is deteriorating. Since the violence that took place in Rakhine State in 2017, domestic broadcasting by the British Broadcasting Corporation and Radio Free Asia has ended, owing to their use of the word "Rohingya". Media access to Rakhine State and conflict-affected parts of Kachin and Shan States remains restricted. The Special Rapporteur calls for the immediate lifting of all restrictions to enable journalists to freely obtain information in those areas.

5. The Special Rapporteur has made repeated calls for greater political freedom and the objective application of laws to promote the legitimate exercise of democratic rights by political dissidents, young people and human rights defenders. A total of 8,541 prisoners, including 36 political prisoners, were pardoned and released in April. As at 31 July 2018, however, there were 33 political prisoners and 242 people, 53 of them in detention, being prosecuted for exercising their legitimate rights.

6. The Special Rapporteur deplores the ongoing, spurious prosecution under the Official Secrets Act of 1923 of Wa Lone and Kyaw Soe Oo, two Reuters journalists who uncovered a massacre at Inn Din village in the north of Rakhine State in 2017. In July 2018, the court decided to charge them, although it had previously heard

[1] See https://www.ohchr.org/Documents/Countries/MM/AnnexesA7345400.pdf.

[2] Ibid.

evidence from a policeman that their arrest had been set up and that his superiors had arranged for the journalists to be handed documents, the possession of which forms the basis of the charges against them. The journalists testified that, while in pretrial detention, they had been ill-treated and interrogated about their investigation in Rakhine State, not about the documents they are alleged to have possessed. The Special Rapporteur reiterates her call for the charges against the journalists to be dropped and for their unconditional release.

7. The Special Rapporteur condemns the conviction of former-child soldier Aung Ko Htwe, who was sentenced to two years' imprisonment under section 505 (b) of the Penal Code in March 2018 in relation to his interview about being a child soldier in the Tatmadaw (the armed forces of Myanmar). He was also convicted under section 228 of the Penal Code for insulting the judge. Immediately after his trial, he allegedly stepped on a copy of the 2008 Constitution and was charged under the Union Seal Law of 2010; he faces a further three years in prison if convicted. The Special Rapporteur calls for the withdrawal of all charges against him and his unconditional release.

8. Violations of the right to freedom of expression online are increasing. The Special Rapporteur recalls that restrictions on the freedom of expression online are acceptable only if they are provided for by law and are proportionate and necessary to protect an interest that is recognized under international law. She reiterates concerns about several problematic provisions of the Telecommunications Law of 2013, in particular section 66 (d), which does not accord with international standards for defamation offences, as they may result in imprisonment. At present, 57 people face prosecution under that provisions, including some who were charged in 2016; all charges should be dropped. In the ongoing trial of the journalist Swe Win in relation to an article he posted that was critical of the extremist monk U Wirathu, the court reportedly has accepted documents that were falsified by the plaintiff and Mr. Swe Win has been subject to harassment by supporters of Mr. Wirathu.

9. The Government recently set up a social media monitoring team, the purpose of which the Minister for Transport and Communications reportedly said was to identify those who instigate political instability on the Internet and on social media. There is little public information available as to its mandate, procedures and any safeguards in place to ensure that the rights to freedom of expression and privacy are not infringed. The Special Rapporteur is aware that social media, in particular Facebook, are used extensively by much of the population in Myanmar and that, for many people, Facebook is the main way of using the Internet. Facebook should be more transparent about operation of its platforms and commit more resources to combating content that violates its own standards, in particular posts that incite hostility, discrimination or violence.

10. The Special Rapporteur remains disturbed by consistently high levels of hate speech, especially targeting religious minorities. It has been reported that a young Muslim woman who participated in a peace demonstration in Yangon received death threats and was targeted with religious slurs and that her personal details, including a photograph of her identification card, were shared on Facebook nearly 2,000 times following the demonstration. As the Government attempts to assuage Buddhist ultranationalist sentiments, the Special Rapporteur is disturbed by information she has received about the ties of significant public and private entities, including the military, to extremists.

11. The right to freedom of religion and belief in Myanmar must be upheld for all, be they members of majority or minority religious groups or have no religion. The General Administration Department of the Ministry of Home Affairs in several townships in Yangon Region, Kachin State, Shan State and Ayeyarwady Region has issued an order restricting the teaching of Islam and Arabic and the building of new

places of worship for Christians and Muslims. Reportedly, under the order, religious teaching may be carried out only in the Myanmar language at mosques and madrasas approved by the Ministry of Religious Affairs using textbooks approved by the Ministry, and teaching at home is prohibited. The Special Rapporteur is concerned that that infringes the rights of all people to freely teach and study their religion in their chosen tongue and calls on the Government to withdraw the order. She is further alarmed by reports that at least 190 churches have been destroyed or damaged by the military in Kachin State since 2011 and that 22 have been destroyed or damaged in Myitkyina, Waingmaw and Chi Hpwi since April 2018.

12. The police cracked down on peaceful demonstrations in April and May 2018 led by youth movements to express their concern about the situation of civilians in conflict-affected areas. Most of those detained were charged under the Right to Peaceful Assembly and Peaceful Procession Act (Peaceful Assembly Act) of 2011, while three people in Myitkyina were charged under section 500 of the Penal Code for alleged defamation of the military. At the Yangon demonstration, the police, present in large numbers, is reported to have used force against peaceful protestors, accompanied by threats and violence on the part of so-called ultranationalist counter-protestors. In early July, the police violently suppressed a protest against the erection of a statue of General Aung San in Kayah State. Twenty-three youth activists were arrested and face charges under section 505 of the Penal Code, the Peaceful Assembly Act, or both. That is unacceptable; charges against all protestors should be dropped and the Government is again urged to ensure that any police action be in accordance with international human rights norms and standards. Furthermore, the trial of eight protestors from Rakhine State, who were arrested in January after the police violently suppressed a demonstration in Mrauk-U, continues. The Special Rapporteur encourages the Government to engage in open, inclusive dialogue with all communities, including minorities and marginalized groups, on the issues about which they are protesting so as to build trust and understanding, and refrain from action that may reinforce divisions.

13. The Special Rapporteur reiterates concerns she has previously raised about the Peaceful Assembly Act and notes that its provisions regarding the notification of assemblies, including the requirement that detailed but unnecessary information, such as the contents of signs and slogans that will be used, be submitted in advance, do not comply with international standards. She also notes that amendments to the Act proposed in February 2018 have passed the Amyotha Hluttaw (upper house of the parliament) and that their enactment would result in further undue restrictions on the right to freedom of peaceful assembly, including a requirement that organizers submit information about funding sources.

14. Section 17 (1) of the Unlawful Associations Act of 1908 is continually used against people found to be in possession of hunting rifles, walkie-talkies and driver's licences in conflict-affected parts of Shan and Kachin States. At the end of February 2018, eight men were sentenced to up to 10 years' imprisonment by Ho Pong Township Court for associating with the Restoration Council of Shan State, a signatory to the Nationwide Ceasefire Agreement of which membership is not illegal.

III. Justice and the rule of law

15. The Special Rapporteur welcomes the launch of the Fair Trial Guidebook for Law Officers by the Office of the Attorney General, which incorporates the right to a fair trial as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. She also welcomes the strategic plan of the Supreme Court for the period 2018–2022, which sets out a path for

achieving the highest quality justice for all and promoting public trust and confidence in the courts and the effective rule of law.

16. The rule of law is critical for a successful democratic transition and ensuring the human rights of all in Myanmar. The Constitution, although in need of amendment, already sets forth many rights that must be upheld by all branches of Government. The Special Rapporteur continues to receive information about the arbitrary, biased and opaque application of laws, many of which are vague, overly broad, incompatible with international standards and in contravention of constitutional rights. Those laws, including the Official Secrets Act, Unlawful Associations Act and Telecommunications Law, should not continue to be used as a weapon by the Government to suppress the legitimate exercise of fundamental rights, but should be amended or repealed. Despite attempts at reform in recent years, systemic and structural issues remain, such as the lack of judicial independence, the inability of law enforcement bodies to investigate cases and uphold law and order and the absence of transparency and predictability in the application of laws. The Special Rapporteur therefore encourages the Government, with international assistance, to foster a justice system that upholds the rule of law and in which the rights of all in Myanmar are respected.

17. Several draft laws that may affect freedom of expression are being developed, including the bill on protection against hate speech, the right to information bill, the news media amendment bill and the copyright bill. The broadcasting amendment bill has reportedly been adopted. None have been the subject of public consultation and, with the exception of the copyright bill, which is before the parliament, civil society and the public have no information as to where the bills are in the legislative process.

18. The Special Rapporteur welcomes the finalization of guidelines on gender-based violence by the Maternal and Reproductive Health Division of the Ministry of Health and Sports and looks forward to their dissemination. She reaffirms that draft legislation on the prevention of violence against women, which has not been finalized, should comply with international standards and the obligations of Myanmar under the Convention on the Elimination of All Forms of Discrimination Against Women and be enacted and implemented without delay.

19. The Special Rapporteur welcomes the proposed amendments to the Child Law of 1993, under which it is expected that diversion will be introduced as an alternative to detention, the principle of using detention only as a last resort will be reinforced, provision for protecting children associated with armed groups and armed forces will be made and those responsible for the recruitment and use of child soldiers will be held accountable. Under the amendments, the minimum age of criminal responsibility should be lifted from 7 to 12 years of age, the age for compulsory education should be raised incrementally to that of the minimum permissible age for employment, which is expected to be raised in all sectors to 14 years, and the worst forms of child labour should be prohibited for all children under the age of 18 years. She notes the commitment under the Union Accord entered into by the parties to the third session of the 21st-Century Panglong Conference to eliminate violations against children and abide by the provisions of the Convention on the Rights of the Child relating to the all-round development of children.

20. The Special Rapporteur welcomes the adoption of standard operating procedures on health care in prisons that were jointly developed by the Prison Department and the Ministry of Health and Sports, with support from the United Nations, and improvements in the health-care infrastructure in three prisons in Myitkyina, Lashio and Insein. She awaits the implementation of the standard operating procedures in all prisons from late 2018.

21. The Special Rapporteur commends the Government on its national drug policy and notes that Myanmar is the first country in South-East Asia to adopt the framework

of the special session of the General Assembly devoted to countering the world drug problem together. She welcomes the policy to promote and protect the health, safety and well-being of individuals, families, members of society in vulnerable situations and communities.

IV. Development, investment and natural resources

A. Land rights

22. The legacy of land confiscations and forced evictions under successive military Governments continues to have an impact. The Special Rapporteur repeats her recommendation to the Government to investigate ongoing and past cases of land expropriation and provide adequate remedies to the victims of illegal land confiscation. Issues relating to land in and around the Thilawa special economic zone that is said to have been seized in the 1990s without compensation, and much of which has not been developed by the Government, remain unresolved. Thirty-three farmers who had been farming part of the land for many years and stayed on it were convicted of criminal trespass under the Penal Code in May 2018. Some 39 families had been living on or farming part of that vacant land until 2017, when a company apparently controlled by Union of Myanmar Economic Holdings, which is owned by the military, fenced the land in such a way that it was often inaccessible, except by water. The families suffered numerous adverse consequences as a result, including the death of a woman when she could not leave the land in time to receive urgent medical treatment. The families faced violent police action in May 2018, during which two people were injured and three arrested and charged for allegedly injuring the police officers. All charges should be dismissed and the Government should ensure that people are relocated only following a fair land expropriation process and resettled with proper compensation and appropriate livelihoods.

23. The reform of land use and acquisition laws is vital and the Special Rapporteur welcomes information that the Government is drafting a law in accordance with the national land use policy. That should be done in a consultative manner and be consistent with international standards and the obligations of Myanmar under the International Covenant on Economic, Social and Cultural Rights, in particular with regard to the right to an adequate standard of living, which encompasses protection against forced eviction. The land rights of farmers, communities and ethnic minorities should be recognized and protected, and customary tenure and land management practices acknowledged, under the law.

24. The Special Rapporteur remains concerned about proposed amendments to existing land laws and about what their status will be, given the development of new land legislation. The Government should ensure that legislation is clear and free of inconsistencies that could arise from conflicting provisions. Proposed amendments to the Vacant, Fallow and Virgin Lands Management Law of 2012 that have been passed by the Amyotha Hluttaw raise questions. Of particular concern is the prospect of people facing criminal charges for being present on land that is classified as vacant, fallow or virgin, but for the use of which a permit is not required under the law. Proposed amendments to the Farmland Law of 2012 fail to recognize customary land use and could facilitate land-grabbing. Concerns remain with regard to draft land acquisition legislation: many provisions are vague; customary practices are not recognized, which could facilitate land grabs; the definition of "public purpose" is overly broad; and the urgent acquisition process contains few protections for landholders.

25. In Kachin State, large tracts of land belonging to internally displaced persons have been appropriated without their consent for agricultural use (particularly banana plantations), mining or military purposes, or have been claimed by other third parties under the land laws of 2012. The internally displaced persons, who are already vulnerable, are concerned that the longer they are displaced, the more likely it is that they will be unable to maintain or assert their rights to their land, to which they wish to return.[3] Under the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, annex), internally displaced persons have the right to return to their homes and recover their property, or be compensated where that is not possible.

B. Investment, business and natural resources

26. The Special Rapporteur understands the importance of investment and economic development for the achievement by Myanmar of the Sustainable Development Goals and is aware that several countries are investing in development in that country. All investments should be made responsibly and in line with the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex).

27. For investment to occur in a responsible and sustainable manner, the Government should, first, fulfil its duty to protect human rights through robust policy and regulatory frameworks, including in relation to land, thereby ensuring that businesses accept their responsibility to respect human rights. Second, all businesses investing in Myanmar should conduct rigorous human rights due diligence in accordance with international standards, and all the more so in areas affected by violence and conflict. They should pay special attention to the potential impact of their activities on the human rights of individuals that may be at a heightened risk of vulnerability or marginalization and to the different risks faced by women and men. The Special Rapporteur welcomes the fact that some multinational enterprises have engaged with the Government on those issues and that several corporations are piloting the implementation of the Voluntary Principles on Security and Human Rights. The home countries of companies that invest in Myanmar should work to ensure that those companies respect human rights throughout their operations. Third, the Government should ensure the availability of effective judicial and non-judicial remedies.

28. The Special Rapporteur is saddened by reports that, in July 2018, landslides in jade mines in Hpakant, Kachin State, led to the deaths of up to 100 people, with many more injured. She has received information about a considerable number of mine machines, possibly in the thousands, which have been sold by foreign companies and are used in jade and copper mines in Kachin State. Reportedly, use of such equipment has led to expanded mining activities, which have in turn had a severely adverse effect on communities and the environment and contributed to deaths in landslides and floods. Foreign companies that sell mining equipment have a responsibility to manage the human rights risks to which they are linked through provider-customer relationships. In accordance with the Guiding Principles, the companies involved should conduct human rights due diligence and use their leverage to address adverse impacts.[4] Additionally, the home governments of such corporations should require that they conduct due diligence to prevent abuses by their business partners.[5]

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[3] Oxfam, "Displaced and dispossessed: conflict-affected communities and their land of origin in Kachin State, Myanmar", 1 June 2018.

[4] Therese Sjöström, *Overlooked and Undermined*, SwedWatch, June 2018.

[5] See general comment No. 24 (2017) of the Committee on Economic, Social and Cultural Rights on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (para. 33).

29. The gems policy is close to finalization, following an inclusive consultation process that involved external experts, civil society, the private sector and communities. Proposed gemstone legislation, which was drafted prior to the policy, remains before the parliament, having been passed by the Amyotha Hluttaw. The Government should ensure that the legal and policy frameworks are aligned, protect the environment and human rights of miners and communities and guarantee transparency to prevent corruption.

30. The Special Rapporteur welcomes the publication of the Myanmar Extractive Industries Transparency Initiative reports for the years 2014–2015 and 2015–2016 in March 2018. They contain much information about the oil, gas and mining (including gemstones) sectors and represent an important first step towards transparent natural resource extraction in Myanmar. The Government should now undertake policy reforms, including those recommended in the reports, to improve governance and regulatory performance across those sectors, so that revenues from natural resources are used for the benefit of the people of Myanmar. Meaningful discussions about the equitable sharing of natural resources and governance should take place as part of the peace process.

31. The development of special economic zones and related projects at Thilawa, Dawei and Kyaukphyu continue to be of concern. An independent vulnerability study in February found that the people relocated from the Thilawa site face a drastic increase in poverty, debt and food insecurity. While a complaints procedure has been developed, civil society groups are concerned about its legitimacy and whether it will provide access to a remedy for community members. In Dawei, it is feared that legal requirements of the environmental impact assessment process are not being followed and that communities are not being provided with sufficient information and properly consulted on decisions being made. Road building between the Dawei zone and Htee Khee on the Myanmar-Thailand border has reportedly led to land acquisition and the environmental impact assessment process has failed to address the concerns of the ethnic Karen community. The Special Rapporteur renews her call for the Government to carry out a strategic environmental impact assessment in Kyaukphyu and its surrounding areas to establish how the development would affect communities and the environment, in accordance with the recommendations of the Advisory Commission on Rakhine State.

32. The Special Rapporteur is aware of the announcement by the Government that economic cooperation zones will be developed in Kachin State and that plans to develop Maungdaw economic zone appear to be going ahead. Proper consideration should be given to conflict sensitivity when carrying out such projects. Moreover, the obligations of Myanmar under the International Covenant on Economic, Social and Cultural Rights must be met, the relevant national laws upheld and environmental impact assessments carried out. All affected communities need to be kept informed and genuinely consulted continuously and in a transparent manner so that they may participate in decision-making.

C. Economic and social rights

33. The Special Rapporteur is pleased to see that the Government is continuing to take steps towards the realization of rights in accordance with the International Covenant on Economic, Social and Cultural Rights and 2030 Agenda on Sustainable Development. Under the Union Accord (see para. 19 above), commitments were made for the provision of an accessible and inclusive education system. It has been reported, however, that children in Kachin and Rakhine States encounter impediments to education. In Kachin State, fighting has led to a reduction in the quality of education available, in particular in areas not under Government control, and a lower retention

rate of students. Reportedly, 324 of 424 schools in the townships of Maungdaw, Buthidaung and Rathedaung, Rakhine State, that had been closed since the violence of August 2017 were reopened in March 2018. However, a lack of teachers, materials and facilities hinder access to education and limit its quality. Moreover, many schools continue to segregate students, limiting opportunities for dialogue and social cohesion. Restrictions on movement continue to hamper travel by Rohingya children for post-primary education.

34. Although the Government has committed itself to guarantee universal birth registration, inequities remain. There have been improvements in coverage in the areas that were prioritized, including south Shan State, Tanintharyi Region and Nay Pyi Taw, where an estimated 120,000 children have been newly registered. The Special Rapporteur calls for continued action and for the Government to conduct universal birth registration campaigns in all parts of the remaining areas, including parts of Shan, Kachin and Rakhine States, with adequate financial, technical and capacity support.

35. The Union Accord includes a commitment to provide accessible and inclusive universal health coverage. The Special Rapporteur is concerned, however, about the limited availability in Myanmar of mental health and psychosocial support services, which are especially important for conflict-affected populations. It is essential to build capacity and strong mechanisms to provide such services to those who require support. A lack of access makes it difficult for humanitarian actors to intervene to prevent maternal mortality and morbidity. Parts of Kachin, Shan and Rakhine States affected by violence and conflict have the highest maternal mortality ratios.

V. Conflict and violence-related rights violations and the peace process

A. Armed conflict and situations of violence from March 2018

36. The Special Rapporteur condemns the widespread and systematic violations of human rights and international humanitarian law that are alleged to have been perpetrated by the Tatmadaw in several places around the country for decades. Those violations, including killing, rape, torture, looting, arson, enforced disappearances and forced displacement, may amount to genocide, crimes against humanity and war crimes. Ethnic armed organizations are also alleged to have committed serious violations of international humanitarian law and human rights law, including the forced recruitment and use of child soldiers. The recurring clashes between the Tatmadaw and those armed groups, resulting in the loss of civilian lives and displacement, suggest that the parties to the conflict do not meet their obligations under international humanitarian law in the conduct of hostilities.

37. There is credible information that the 33rd and 99th Light Infantry Divisions were among those responsible for perpetrating extreme violence against the Rohingya population in northern Rakhine State from 25 August 2017 and that, in the first half of 2018, they and other units were active in Kachin and Shan States, where civilians were subjected to violence.

1. Rakhine State from 25 August 2017

38. The Special Rapporteur has previously reported on the heinous violence unleashed on the Rohingya of northern Rakhine State following alleged attacks by the Arakan Rohingya Salvation Army on 25 August 2017. Credible reports about serious violations that are alleged to have occurred and those alleged to be responsible continue to be published.

39. In August 2017, the 33rd and 99th Light Infantry Divisions were reportedly deployed to northern Rakhine State. They, along with soldiers from the 564th Light Infantry Battalion, which is based in northern Rakhine State under the Western Command, and other security forces, allegedly engaged in widespread and systematic human rights violations against the Rohingya population. The 564th Light Infantry Battalion reportedly carried out a massacre at the village of Maung Nu, Buthidaung Township, while the 33rd Light Infantry Division did the same at the village of Chut Pyin, Rathedaung Township, and the 99th Light Infantry Division at the village of Min Gyi, Maungdaw Township; all three massacres involved the killings of many men, women and children, beatings, rapes and the burning of houses.[6] That type of violence took place in villages across northern Rakhine State with varying degrees of severity and continued for weeks. In what was ostensibly a "counter-terrorism" operation, the entire Rohingya population of northern Rakhine State appears to have been targeted, leading the vast majority to flee to safety in Bangladesh.

40. The Arakan Rohingya Salvation Army has allegedly committed human rights abuses.[7] Its members allegedly kidnapped and killed dozens of Hindus in Ah Nauk Kha Maung Seik and several members of the Mro minority in Khu Daing, and conducted targeted killings of Rohingya accused of being informants to the authorities in the months between October 2016 and August 2017. The Special Rapporteur firmly believes that those allegations should be investigated. The Government, however, should not use such abuses to justify crimes allegedly committed against the entire Rohingya population.

2. Kachin and Shan States from December 2017

41. Following frequent clashes between the Tatmadaw and ethnic armed organizations in December 2017 and January 2018, armed conflict intensified significantly in northern Myanmar from April 2018, with devastating impact on civilians. Frequent, indiscriminate aerial bombings, mortar shellings and the use of landmines across nine townships and in the town of Laiza, Kachin State, which is controlled by the Kachin Independence Organization, in April and May 2018 resulted in the displacement of more than 8,000 people. In northern Shan State, fighting took place between the Tatmadaw and ethnic armed organizations, and among those organizations themselves.

42. There have been several cases of summary executions by the Tatmadaw. On 18 March, two civilians, one of whom was a human rights defender, were shot dead as they drove a motorbike near the Upper Yeywa dam site in Kyaukme Township, Shan State. In March, two men were found dead in Man Si Township, Kachin State; they had been missing since 31 January, when they were seen in the custody of the Tatmadaw. Members of the 88th Light Infantry Division of the Tatmadaw allegedly abducted, detained, beat, raped and killed six women medical staff from the Ta'ang National Liberation Army on 11 July 2018 near Awe Law, Manton Township. The women's severely mutilated bodies were found by villagers three days later. Those allegations should be the subject of a credible independent investigation; violence against and the killing of persons in detention are serious violations of common article 3 of the Geneva Conventions.

43. Reports of the indiscriminate use by the Tatmadaw of all kinds of weapon in civilian areas continue. On 14 March, four civilians died and 14 houses were destroyed by heavy artillery in the village of Tawphey, Kyaukme Township, in Shan

[6] Amnesty International, "We will destroy everything: military responsibility for crimes against humanity in Rakhine State", 27 June 2018.

[7] Amnesty International, "Myanmar: new evidence reveals Rohingya armed group massacred scores in Rakhine State", 22 May 2018.

State. On 11 April, the Tatmadaw regional operations command in Tanai reportedly launched mortar shells and airstrikes on several villages, killing at least two civilians. More than 2,000 civilians fled three villages in Tanai for the jungle as soldiers, allegedly wearing civilian attire, started a simultaneous ground attack. The civilians, including pregnant women who gave birth en route, were unable to leave the remote area, where some had to stay until June. In May, clashes between the Tatmadaw and the Ta'ang National Liberation Army around Mu Se Township reportedly left 19 people dead and more than 20 injured, including some Chinese nationals. On 28 June 2018, troops of the 88th Light Infantry Division reportedly fired eight mortar rounds at the village of Ma Nane Un, Kutkai Township, killing one child and injuring seven civilians. There had been no fighting in or around the village at the time.

44. The Special Rapporteur has received multiple distressing reports of what appears to be collective punishment and the use of human shields; both are prohibited by customary international humanitarian law. On 1 April in the village of Nam Wa, in Mu Se Township, Shan State, the military reportedly threatened to burn down the entire village unless families aligned with the Kachin Independence Army left immediately. While fleeing on 11 April, villagers from Lai Nawng Khu, Hpakant Township, Kachin State, were reportedly forced by the 424th Light Infantry Battalion to lead soldiers through the jungle while being monitored by a drone, and a civilian was injured by a landmine. In late April, the 33rd Light Infantry Division reportedly conducted operations in Njangyang Township, Kachin State, against the Kachin Independence Army, during which they burned two homes in the villages of Sani Tu Yang and Tangbau Yang after villagers had fled, allegedly to punish them for the activities of the Kachin Independence Army.

45. Hostilities in northern Shan State in March between the Ta'ang National Liberation Army and the Restoration Council of Shan State resulted in the displacement of nearly 4,000 people from three townships and the deaths of at least five civilians. Clashes between those groups and the Tatmadaw and the Shan State Progressive Party in July reportedly led to the temporary displacement of 3,000 people, mostly from Monewi, Namtu and Hsipaw. A further 800 people were displaced from Namtu in early August.

3. Kayin State from March 2018

46. In March 2018, conflict resumed in Kayin State. More than 1,500 Tatmadaw soldiers reportedly went into civilian areas to repair a road in Hpapun District. That led to clashes between the Tatmadaw and the Karen National Liberation Army, a signatory to the Nationwide Ceasefire Agreement, and the subsequent displacement of more than 2,400 civilians, who have been unable to return home since. Those incidents were in violation of the ceasefire, under which troop reinforcement in ceasefire areas, other than for administrative or emergency medical support and the routine rotation of troops, is prohibited.

4. Chin State in May and June 2018

47. In Paletwa Township, Chin State, clashes in May between the Tatmadaw and Arakan Army resulted in the deaths of five civilians. Further clashes in May and June led to the internal displacement of approximately 1,000 people, in addition to the approximately 1,300 people who had been displaced to India in late 2017 and who reportedly have not returned home.

5. Sexual violence

48. The Special Rapporteur received troubling information concerning the alleged rape of a 73-year-old woman by a Tatmadaw soldier in Mong Phyak, eastern Shan

State, on 2 April 2018. The report of the Secretary-General on conflict-related sexual violence of March 2018 listed the Tatmadaw as being credibly suspected of committing or being responsible for patterns of rape or other forms of sexual violence in situations of armed conflict. Women and girls have reportedly been raped in Kachin State, northern Shan State and Tanintharyi Region by members of the Tatmadaw and ethnic armed organizations. The report found that the widespread threat and use of sexual violence was integral to the Tatmadaw's strategy of humiliating, terrorizing and collectively punishing the Rohingya community and a tool to force them to flee and prevent their return.

6. Landmine use

49. The use of landmines continues unabated, with 23 people killed and 136 injured from January to May in Kachin and northern Shan States. According to recent data, at least 3,337 casualties involving mines have been reported since 2007; Myanmar has the second highest number of antipersonnel landmine casualties in Asia.[8] The Special Rapporteur remains extremely concerned about the threat posed to civilians by mines and calls on all parties to cease laying mines immediately, increase mine-awareness education and clear mines without further delay.

B. Displacement and humanitarian aid

50. The escalation of conflict has resulted in the displacement of approximately 20,000 people in Kachin and Shan States since the start of 2018, most of whom have since been able to return home. People who have been recently displaced reportedly have not been allowed to build shelters in camps and the Government has not recognized them as internally displaced persons. An estimated 106,000 internally displaced persons reside in camps and displacement sites in Kachin and northern Shan States. Many of them have been in those locations since 2011 and remain unable to return home safely.

51. Humanitarian access, including for national organizations, is increasingly constrained. On 23 April, a food convoy organized by the Myanmar Red Cross was prevented from entering the village of Man Wai, Kachin State. More than 100 civilians were trapped in that village for three weeks with little or no access to food, medicine and other items needed for survival. In June, the Kachin Baptist Convention, an organization that has been providing humanitarian assistance to displaced people in Kachin for many years, was threatened with prosecution under section 17 (1) of the Unlawful Associations Law if it continued to travel to territory held by the Kachin Independence Organization, where thousands of people in need are living. That and other restrictions imposed by the Tatmadaw and Government on access by international and national humanitarian actors are violations of the obligation of Myanmar under international humanitarian law to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.

52. Some 128,000 Rohingya and Kaman people have been confined to squalid camps in central Rakhine State since 2012. They include Kaman Muslims, who have full citizenship rights under Myanmar law, living in dire conditions in Kyaukphyu. Their situation remains precarious; they live without privacy in undignified, overcrowded longhouses and are subject to extreme movement restrictions. They are the subject of policies that prevent them from engaging in livelihoods, attending school or accessing health services and they regularly face exploitation by the authorities. In addition, 200,000 mostly Rohingya Muslims who live in villages in

[8] Myanmar Information Management Unit, "Townships with known landmine contamination (2017) and casualties in Myanmar (as of Dec 2016)".

central Rakhine State also face severe hardship brought about by movement restrictions that limit their access to livelihoods, education, health care and other basic services and have led to avoidable deaths in medical emergencies.

C. The closure of camps for internally displaced persons

53. The Special Rapporteur is disturbed by the Government's recent announcement of a national strategy to close camps for internally displaced persons. Given that conflict continues in Kachin and northern Shan States, as do violence and discrimination against the Rohingya in Rakhine State, she has serious concerns about the Government's premature intention to close the camps and its capacity to facilitate the return of internally displaced persons to their places of origin in accordance with international standards.

54. There is a great need for an open and transparent conversation between the Government, the international humanitarian community and the internally displaced persons themselves. The Government is reportedly collecting data, including photographs, in Kachin State at the household level and internally displaced persons have not been told how the data will be used. Prior to any movement of people or closure of camps, it is critical that they be informed about locations, services, freedom of movement, livelihoods and security and express their free and informed consent to any relocation to their place of origin or elsewhere. Any relocation should be durable, so that their need for assistance is reduced. Their land and property should be restored to them or adequate compensation made. Special consideration, assistance and support should be provided to people with disabilities, women, children and persons in vulnerable situations. The Special Rapporteur calls on the Government of Myanmar to make public its precise plans for the closure process.

D. The peace process

55. The Special Rapporteur welcomes the fact that the Government, the military and all ethnic armed organizations came together for dialogue about the nation's future at the third session of the 21st-Century Panglong Conference. However, she is concerned that several issues slated for discussion were deemed too sensitive and urges all stakeholders to resolve differences on substantive issues through negotiation and to build trust and mutual understanding, so that the nation might finally see peace.

56. The Special Rapporteur is disappointed by reports that women made up only 17 per cent of the delegates, a drop from the estimated 19 per cent who attended the previous session and falling well short of the 30 per cent target. Women should be afforded genuine opportunities for representation and participation, including in substantive discussions not only about their protection but also their roles and experiences in conflict-affected communities, conflict prevention and recovery and peacebuilding. The women and peace and security agenda (prevention, participation, protection and relief and recovery) should be seized upon to ensure sustainable peace. Under the Union Accord, 30 per cent involvement of women in each political sector and capacity-building for women is encouraged. The meaningful participation of women in all areas of life is essential for the country's future prosperity.

57. The Special Rapporteur was greatly troubled to receive reports of armed clashes taking place at the time of the conference and just as non-signatory groups were being encouraged to sign the National Ceasefire Agreement. The clashes, themselves in violation of the ceasefire, reportedly pitted the Tatmadaw against the Restoration Council of Shan State, a signatory to the ceasefire, in Mong Kung Township, southern Shan State, and led to the displacement of at least 450 civilians. The Special

Rapporteur reaffirms that the road to peace is through political dialogue and not violence.

VI. Rakhine State

A. Dignity and the right to recognition

58. Rohingya people have lived in Rakhine State for generations, alongside Hindus and members of the Rakhine, Mro, Daingnet and Kaman ethnic groups. It is accepted practice that nationality is acquired at birth, either through a parent or the country of birth. The right to nationality is guaranteed under international law, including human rights treaties to which Myanmar is a party.[9] States do not have an absolute right to decide who their nationals are and are prohibited from discriminatory or arbitrary deprivation of nationality.[10] The Citizenship Law of 1982 does not comply with the obligations of Myanmar under international law and the way in which it is applied results in discriminatory and arbitrary deprivation of nationality for many of the Rohingya. In addition, the law and its implementation contravene the rights to equality and non-discrimination enshrined in the Constitution of 2008. The Special Rapporteur is disturbed by reports that other Myanmar Muslims are being required to identify as "Bengali" on citizenship documentation.

59. The so-called "pathway to citizenship" that the Government has been promoting for the Rohingya applies to non-nationals: those who migrated from outside and are seeking status in an alien country. It does not apply to those who were born in the country, those who have been living in the country for decades, or those who were, or are the descendants of, citizens of the country. Moreover, it denies people dignity and does not provide a durable citizenship solution for the Rohingya. Their right to nationality should be recognized.

60. The status of Rohingya people in Cox's Bazar as refugees should also be recognized. The definition of refugees contained in article 1 of the Convention Relating to the Status of Refugees of 1951, which has the status of customary international law, applies to Rohingya people living in Bangladesh and other countries. They fled Myanmar owing to a well-founded fear of persecution for reasons of their ethnicity, race and religion, and are protected from refoulement to Myanmar.

B. Human rights violations and abuses in northern Rakhine State

61. By 31 July, a total of 12,120 individuals had so far crossed the border from Myanmar to Bangladesh in 2018. The statements by newly arrived refugees in Cox's Bazar to the Special Rapporteur indicated that the situation in northern Rakhine State is far from stable or safe for them. They reported that conditions had worsened significantly since before the violence of August 2017 as a result of heightened movement restrictions, lack of access to livelihoods, education, health and basic services, and ongoing violence, intimidation and extortion by security forces. Discriminatory laws, policies and local orders, including those relating to freedom of movement, family registration, marriage and birth, remain in place and a curfew has been imposed in the townships of Maungdaw and Buthidaung since December 2016.

[9] Convention on the Rights of the Child (art. 7), Convention on the Elimination of All Forms of Discrimination against Women (art. 9), Convention on the Rights of Persons with Disabilities (art. 18).

[10] Convention on the Reduction of Statelessness of 1961 (art. 7).

62. The citizenship verification process, by which national verification cards are issued, is strongly opposed by the Rohingya community. The Special Rapporteur has received information that the cards are mandatory for obtaining fishing and boat licenses and for the right to participate in local elections. Pressure by security forces to accept the cards and threats against those who fail to do so have been reported as the reason for violence that has recently driven Rohingya people to Bangladesh and as a feature of the lead-up to the massacre at Chut Pyin village in August 2017. The Government has engaged in a degree of consultation in some areas but not widely and there has been no genuine implementation of the recommendations of the Advisory Commission on Rakhine State with regard to the cards. Most importantly, the cards do not confer full citizenship rights on their bearers and are therefore not a genuine solution for the Rohingya citizenship issue.

63. The Special Rapporteur is aware of significant reconstruction projects being undertaken across northern Rakhine State, where more than 360 Rohingya villages were allegedly systematically burned down and, in some many cases, bulldozed. The authorities state that development of the area is for returnees and established the Union Enterprise for Humanitarian Assistance, Resettlement and Development for the purpose. Since access to the area has been restricted for many months and given the lack of transparency about the activities of the body, it is difficult to obtain an accurate picture of what is happening on the ground. It is alleged that new bases for the security forces, reception and transit centres for repatriation and model villages have been built on land that was previously home to Rohingya. Model villages have historically been used to encourage the resettlement of Buddhists to Rakhine State and ethnic Rakhine community leaders are reportedly encouraging members of Buddhist ethnic groups to move to the model villages. There are also questions about the status of Rohingya land, including farming and paddy land, and whether property will be restored to refugees on their return.

64. The Special Rapporteur is extremely worried that the activities of the civilian and military authorities in northern Rakhine State are cementing the expulsion of the Rohingya, as development projects fundamentally alter the landscape. She is also concerned that development activities are fuelling fear and distrust between different ethnic and religious communities rather than helping to rebuild communal cohesion and harmony, which will be necessary for a sustainable return of the Rohingya. Indeed, as the Advisory Commission on Rakhine State found, members of all ethnic and religious groups in Rakhine State have been marginalized by successive central governments and face underdevelopment and poverty. Information received from individuals who have recently visited the area suggests that life for everyone in northern Rakhine State is extremely difficult.

C. The situation of refugees in Cox's Bazar

65. The Special Rapporteur commends the Government of Bangladesh and the humanitarian community in Cox's Bazar for working tirelessly to support nearly 900,000 refugees, reinforce camp infrastructure and deal with the monsoon rains. The Special Rapporteur visited several camps and witnessed severe and inhumane overcrowding and extreme vulnerability to flooding and landslides. During her meetings with refugees, the Special Rapporteur heard troubling reports of violence in the camps, allegations of trafficking, exploitation and widespread sexual and gender-based violence, and was informed of the particular difficulties faced by people with disabilities. She urges all humanitarian actors to put human rights, protection and gender considerations at the forefront of their work, and donors to ensure that the humanitarian response is sufficiently funded.

D. Repatriation

66. The Special Rapporteur has repeatedly said that the repatriation of refugees from Bangladesh to Myanmar is extremely premature. The Government of Myanmar has made no progress in dealing with or shown any real willingness to address the root causes of the crisis, including long-standing and systematic discrimination through the law, policy and practice, racist propaganda and dehumanizing hate speech, institutionalized anti-Muslim rhetoric and the denial of citizenship rights. Unless those issues are addressed, large-scale repatriation will be entirely antithetical to human rights norms.

67. The United Nations Development Programme, Office of the United Nations High Commissioner for Refugees and Government of Myanmar recently signed a memorandum of understanding to facilitate repatriation and access to northern Rakhine State. The memorandum of understanding remains unavailable publicly and the agencies have not been granted effective access. The Governments of Bangladesh and Myanmar continue to discuss repatriation but the Special Rapporteur is concerned about the lack of transparency and consultation in the process, including the selection by the Government of Bangladesh of approximately 8,000 refugees to be vetted by the Myanmar Government for possible return. Any discussion of repatriation should be consistent with international legal standards, including the participation of the refugees themselves in the process.

68. During her mission to Bangladesh, the Special Rapporteur was informed that the Government of Bangladesh plans to relocate refugees from Cox's Bazar to Bashan Char, an island that has recently appeared in the Bay of Bengal. In response to her request to visit the island, Bangladeshi officials informed her that that would be possible only after the monsoon season. The Special Rapporteur is gravely concerned, as there has been no technical or humanitarian assessment of whether the island is habitable. The refugees in Cox's Bazar are unaware how people will be chosen for relocation or moved to and from the island or how livelihoods, health care, education and other services will be provided. The Special Rapporteur cautions the Government of Bangladesh against the plan, as it appears not to be a sustainable approach to the situation of Rohingya refugees in the country.

VII. Refugees and migrants in India and Thailand

69. The Special Rapporteur held teleconferences with Rohingya refugees and representatives of civil society organizations working with refugees in India. Approximately 17,000 Rohingya from Myanmar are registered as refugees and asylum seekers in India and live in Hyderabad, Jammu and Kashmir and New Delhi. The Government of India, however, asserts that 40,000 Rohingya are present in the country and has threatened to deport them. In additional, approximately 3,000 Chin refugees and asylum seekers are present in India. In New Delhi, Rohingya refugees live in extremely squalid conditions without access to water, health care, sanitation or education. Moreover, the areas in which they live were reportedly torched twice in the first half of 2018, resulting in further difficulties. The Special Rapporteur received troubling information about Rohingya women reportedly facing sexual and other exploitation in Jammu and Kashmir. She calls on the Government of India to respect the rights of the refugees, drop plans to deport them and protect them from further exposure to violence and persecution.

70. Many of the 121,000 people living in camps on the Thai border with Myanmar are from Kayin State and have been there since the 1990s, believing that it is unsafe to return home. Assistance to them is diminishing. Approximately 6,200 people living

on the border between Shan State and Thailand have not received international assistance since aid was cut in October 2017, even though they cannot return home. The Government of Myanmar should work to make the entire country safe for refugees to exercise their right to return home.

71. On 30 June 2018, the Government of Thailand implemented a new registration regime for migrant workers under which a work permit is granted following the applicant's nationality being verified by the Government of Myanmar. The Special Rapporteur is concerned about the situation of an unknown number of Myanmar migrant workers, particularly Muslims who have been denied citizenship by the Government of Myanmar, who face fines and deportation if they are found to be undocumented by the Thai authorities.[11]

VIII. Accountability

72. The Special Rapporteur notes the statement made repeatedly by the Government of Myanmar following the violence of August 2017 in northern Rakhine State that it would not condone any human rights violations and would take action against perpetrators in accordance with the law where allegations were supported by sufficient evidence. In spite of those pledges and the abundance of evidence that crimes in violation of international law have been committed in Rakhine State, perpetrators have not been held accountable, with the exception of seven unnamed soldiers reportedly convicted by a military court for the massacre at Inn Din village. The Government recently set up a commission of inquiry "to investigate the violation of human rights and issues following the terrorist attacks by the Arakan Rohingya Salvation Army". The commission, however, appears not to have a mandate to advance accountability. The people of Myanmar continue to suffer waves of serious violations of international human rights and humanitarian law with no redress, and have done for the past seven decades.

73. The situation in Myanmar, where genocide, crimes against humanity and war crimes may have been committed, warrants the attention of the International Criminal Court or another credible international judicial mechanism. The international community should stand firm and promote accountability in Myanmar. Justice and the right of victims to reparation should not be contingent on any political or economic interest. Moreover, there can be no genuine or meaningful accountability unless the victims' concerns are addressed.

IX. Conclusion

74. **The Special Rapporteur is convinced that the cycle of violence, injustice and impunity in Myanmar will end only if there is genuine accountability. The limited and insufficient steps that the Government of Myanmar has taken so far to establish accountability demonstrate that it is unable and unwilling to discharge its obligation to conduct credible, prompt, thorough, independent and impartial investigations and prosecutions. As part of her efforts to address those shortcomings, advance accountability and support the Human Rights Council and the General Assembly, the Special Rapporteur has presented a concept note for a proposed accountability mechanism and a supplementary note that clarifies**

[11] Burma Human Rights Network, *Existence Denied*, 2018. Available at http://www.bhrn.org.uk/en/report/1052-burma-reinforces-muslims-statelessness-as-thai-migrant-registration-deadline-looms.html.

questions received from Member States and other stakeholders on the issue.[12] She reiterates that the onus is on the international community to take action. Any delay in instituting justice will only result in more violations. She urges the international community to establish the accountability mechanism under the auspices of the United Nations immediately.

X. Recommendations

75. With regard to democratic space, justice and the rule of law, the Special Rapporteur recommends that the Government of Myanmar:

(a) Immediately cease the arbitrary arrest, intimidation and prosecution of individuals exercising their rights and release all those convicted or detained for doing so;

(b) Introduce comprehensive constitutional and legislative reform to amend laws that are inconsistent with the country's obligations and the international norms and standards highlighted in the Special Rapporteur's present and previous reports;

(c) Establish a systematic public consultation process for the drafting and review of amendments to existing legislation and new legislation, ensuring transparency and compliance with international standards, and consider drafting legislation on law-making;

(d) Ensure respect for the freedom of expression, including online, for all and allow free media access to all parts of the country;

(e) Guarantee the right to free and peaceful assembly;

(f) Investigate all allegations of excessive use of force by the police and other law enforcement officials and take necessary steps to ensure that perpetrators are held accountable;

(g) Guarantee the right to a fair trial and due process for all;

(h) Cease the inhuman and degrading treatment of prisoners and ensure that they are treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners;

(i) Uphold the equal right to freedom of religion and belief of all in Myanmar, condemn publicly all acts of advocacy of national, racial or religious hatred that constitute incitement to discrimination, hostility or violence, including on social media, enact a law to prohibit such acts in accordance with the Rabat Plan of Action, and draft a comprehensive anti-discrimination law or policy;

(j) Cooperate fully with the United Nations, including through the opening of a country office of the Office of the United Nations High Commissioner for Human Rights with a full mandate and by resuming full cooperation with the Special Rapporteur on the situation of human rights in Myanmar.

76. With regard to development, investment and natural resources, the Special Rapporteur recommends that the Government of Myanmar:

(a) Continue to seek international assistance and cooperation to progressively realize the rights enshrined in the International Covenant on

[12] See https://www.ohchr.org/Documents/Countries/MM/AnnexesA7345400.pdf.

Economic, Social and Cultural Rights in an inclusive, non-discriminatory manner;

(b) Ensure access to adequate health care (including psychosocial support), education and services for all without discrimination;

(c) Incrementally raise the age of compulsory education (currently age 10) to match the minimum age from which employment is permissible (14);

(d) Take a rights-based approach to implementing the Sustainable Development Goals, ensure that all development projects are undertaken in accordance with international standards and national laws and build environmental, social and human rights safeguards into those projects;

(e) Ensure that affected communities are consistently provided with information about development projects and participate in inclusive and meaningful consultations, including with regard to environmental impact assessments and resettlement plans, and establish effective feedback and complaint mechanisms;

(f) Ensure the inclusive and transparent participation of all stakeholders in natural resources and land policy development and law reform, and hold discussions on sharing resources as part of the peace process;

(g) Ensure the full implementation, through policies and laws, of the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework;

(h) Immediately stop all coercive measures used to appropriate land and ensure that proper compensation and livelihoods are provided to people who are resettled as a result of such land appropriation;

(i) Ensure that, in accordance with the Guiding Principles on Internal Displacement, internally displaced persons have the right to return to their homes and recover their property or be compensated where that is not possible.

77. **With regard to Rakhine State, the Special Rapporteur recommends that the Government of Myanmar:**

(a) Immediately stop the persecution and dehumanization of and discrimination against the Rohingya people and other violations and abuses against them and ensure that legislation, orders and policies that have been identified as discriminatory by the Special Rapporteur in the present and previous reports are repealed or amended, in line with international human rights norms and standards;

(b) Implement the recommendations contained in the interim and final reports of the Advisory Commission on Rakhine State fully and engage and consult all affected communities in so doing;

(c) Undertake measures to rebuild community trust, understanding and cohesion between different ethnic and religious groups and throughout Rakhine State, including by addressing long-standing grievances;

(d) Immediately allow unfettered access for humanitarian actors, national and international media and independent human rights monitors;

(e) Restore the citizenship of the Rohingya and ensure that all those whose citizenship is restored enjoy the same rights as all other citizens in Myanmar;

(f) Lift all curfew orders and restrictions on the freedom of movement in Rakhine State;

(g) Cease construction of new infrastructure on land formerly occupied by Rohingya villages and ensure transparency in reconstruction activities in northern Rakhine State;

(h) Immediately seek durable solutions for the persons living in camps since 2012, ensuring that all solutions are identified in consultation with the affected communities and that any relocation is voluntary;

(i) Make public the number of people currently detained in Rakhine State and their whereabouts, uphold the rights of accused persons, keep their families continually informed and fulfil due process guarantees;

(j) Create conditions conducive to the repatriation of refugees from Bangladesh to Rakhine State, ensuring that returns are voluntary, sustainable, dignified and safe, allow refugees to return to their places of origin and provide compensation for burned, damaged or looted property.

78. **With regard to the peace process, the Special Rapporteur recommends that the Government of Myanmar:**

(a) Ensure greater meaningful participation of women and civil society in the peace process, particularly in leadership roles, with a minimum quota of 30 per cent women and integration of a gender perspective into sector-wide policy proposals;

(b) Hold inclusive, open dialogue on human rights-related issues in the peace process, including democracy, federalism, minority rights and self-determination;

(c) Take steps to earn the trust of ethnic stakeholders in the peace process, including by ensuring that ethnic groups may proceed with public consultations.

79. **The Special Rapporteur recommends that the Government and all other parties to conflict:**

(a) Cease all hostilities immediately and abide by all applicable principles of international humanitarian and human rights law, including those relating to the distinction between civilians and combatants and proportionality, and consistently take precautions to protect the civilian population and civilian objects;

(b) Immediately ensure prompt, thorough, independent and impartial investigations into allegations of violations committed in conflict areas and the prosecution and punishment of all perpetrators;

(c) Immediately ensure that humanitarian actors have regular, independent and predictable access to all those in need of humanitarian assistance, wherever they may be;

(d) Ensure access for the media and independent human rights monitors to conflict-affected areas;

(e) Release all children under the age of 18 years from the ranks of combatants immediately, refrain from recruiting children and take steps or strengthen measures to prevent underage recruitment, treat any association of children with armed groups as forced, not voluntary, release all children detained on spying or similar charges, ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and complete and adhere to all elements of the joint action plan;

(f) Stop laying new landmines immediately, ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel

Mines and on Their Destruction, hasten the clearance of mines and unexploded ordnance and marking and fencing activities and carry out systematic mine-risk and education activities;

(g) Take specific steps to develop a comprehensive support programme for victims and survivors of sexual and gender-based violence, including access to justice, health and psychosocial care and socioeconomic support;

(h) Ensure that the closure of any internally displaced persons camps takes place in accordance with international standards, including consultation and participation in the process, that it is durable and that prior land and property ownership is restored or compensation made available.

80. **The Special Rapporteur recommends that the United Nations and the international community:**

(a) Refer the situation in Myanmar to the International Criminal Court immediately;

(b) Establish an accountability mechanism to address human rights abuses and violations of international humanitarian law in Myanmar pursuant to the concept note and supplementary document presented by the Special Rapporteur[13] and ensure that perpetrators alleged to have committed international crimes are brought to justice immediately;

(c) Ensure that any decision to repatriate refugees to Myanmar complies with international refugee and human rights law and standards and provide financial and logistical assistance to humanitarian organizations in Bangladesh, India, Thailand and other countries where refugees from Myanmar are living;

(d) Ensure that no Rohingya refugees are returned to Myanmar from Bangladesh unless the root causes of the problems that drove them there are properly addressed and the environment in Rakhine State is conducive to their return;

(e) Ensure that any decision to return refugees from Bangladesh or relocate them from Cox's Bazar to other locations in Bangladesh is taken in consultation with individual refugees, based on their informed voluntary consent, and that such transfers are safe, dignified and sustainable;

(f) Recognize the Rohingya in Bangladesh as refugees, provide education for all refugee children and access to meaningful livelihood opportunities, capacity-building and vocational training for women and men and allow freedom of movement;

(g) Support the Government of Myanmar in complying with its human rights obligations, including in the areas of business and human rights, and economic, social and cultural rights;

(h) Provide adequate resources to the Government of Bangladesh and humanitarian agencies working in that country to shift their activities from emergency response to medium or long-term response and planning and make sure that refugees continue to receive food, shelter and other essential services;

(i) When investing in Myanmar, abide by the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework and other relevant standards regarding investments and business operations, and ensure that the home States of companies operating

[13] See https://www.ohchr.org/Documents/Countries/MM/AnnexesA7345400.pdf.

in Myanmar fulfil their duty to protect human rights, as called for by the Human Rights Council in its resolution 31/24;

(j) Engage and fund programmes in Myanmar on a principled basis, making parameters and funding contingent on genuine reform efforts, and find consensus on a strategy for engaging with the Government of Myanmar, in particular on the issue of human rights;

(k) Conduct a comprehensive independent review of actions by the United Nations system in the lead-up to and after the reported attacks of 9 October 2016 and 25 August 2017 in Rakhine State regarding the implementation of its humanitarian and protection mandates and within the framework of the Human Rights Up Front initiative, assess whether the United Nations and international community could have prevented or managed the situation differently and make recommendations for accountability if appropriate.

United Nations A/73/333

General Assembly

Distr.: General
20 August 2018

Original: English

Seventy-third session
Item 77 of the provisional agenda*
Report of the International Criminal Court

Expenses incurred and reimbursement received by the United Nations in connection with assistance provided to the International Criminal Court

Report of the Secretary-General

Summary

The present report is submitted pursuant to paragraph 19 of General Assembly resolution 72/3, in which the Assembly emphasized the need for the Secretary-General to inform the General Assembly at its seventy-third session of the expenses incurred and reimbursement received by the United Nations in connection with assistance provided to the International Criminal Court.

* A/73/150.

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1. During the period from 1 July 2017 to 30 June 2018, Headquarters provided facilities and services to the International Criminal Court in the amount of $205,071. This includes costs for staff who worked exclusively on matters pertaining to the Court, conference and related services, field security, library and other miscellaneous services.

2. Additional expenses in the amount of $71,814 were incurred by the United Nations Office at Nairobi, the International Tribunal for the Former Yugoslavia, the United Nations Office at Geneva, the United Nations Support Mission in Libya and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic for services provided for the same period.

3. The Court regularly reimbursed the United Nations upon receipt of invoices.

4. Itemized details of facilities and services provided to the Court by Headquarters for the period are provided in annex I, and by the various offices away from Headquarters for the same period in annex II.

Annex I

Facilities and services provided by Headquarters to the International Criminal Court from 1 July 2017 to 30 June 2018

(United States dollars)

Services provided	*Amount*
Payroll costs for staff assigned to work exclusively on matters pertaining to the International Criminal Court as referenced in the agreement by the Legal Counsel	58 118
Services provided for the sixteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court reduced from $229,659 reported at 30 June 2017 to $158,422	(72 991)
Costs related to the Court's share of jointly financed activities for field security	95 700
Audiovisual services rendered by the Broadcast and Conference Support Section of the Department of Management	19 615
Services provided for participation in the Dag Hammarskjold Library consortium membership for access to the online services of the United Nations System Electronic Information Acquisition Consortium	37 707
Services provided for the review of the Financial Disclosure Programme of the key personnel at the International Criminal Court	28 179
Other miscellaneous services: malicious acts insurance policy, Language Proficiency Examination registration fee and Close Protection Officer training	38 743
Total	**205 071**

Annex II

Support provided by offices away from Headquarters to the International Criminal Court from 1 July 2017 to 30 June 2018

(United States dollars)

Office	*Services provided*	*Amount*
United Nations Office at Nairobi	Communications, fuel and other miscellaneous services	21 196
International Tribunal for the Former Yugoslavia	Reimbursable loans	20 774
United Nations Office at Geneva	United Nations laissez-passer, certificates and Human Resources Network services	21 266
United Nations Support Mission in Libya	Flight services and accommodation	4 814
United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic	Cost of combat ration packs	3 764
Total		**71 814**

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General Assembly

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Seventy-third session
Item 77 of the provisional agenda*
Report of the International Criminal Court

Report of the International Criminal Court

Note by the Secretary-General

The annual report of the International Criminal Court on its activities in 2017/18 is submitted herewith to the General Assembly in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court and paragraph 28 of Assembly resolution 72/3.

* A/73/150.

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Report of the International Criminal Court on its activities in 2017/18

Summary

The reporting period was another year with significant developments at all stages of proceedings at the International Criminal Court. The Court issued new arrest warrants against two persons, one of whom was transferred to the Court, continued three trials, pronounced final judgments in two cases before the Appeals Chamber and issued several important decisions on reparations to victims. The Prosecutor opened one new investigation and another 10 situations remained open. In terms of institutional developments, six new judges were sworn in and the plenary of judges elected a new presidency and a new Registrar. At its sixteenth session, the Assembly of States Parties to the Rome Statute of the International Criminal Court decided, by consensus, to activate the jurisdiction of the Court over the crime of aggression as of 17 July 2018.

Commemorations of the twentieth anniversary of the adoption of the Court's founding treaty, the Rome Statute, underscored the significance of the Court's mandate for the global community and demonstrated the breadth of international support for the Court. High-level officials from States across all regions, as well as representatives of international and regional organizations and civil society, voiced strong support for the Court and stressed the need to strengthen the international criminal justice system.

In total, since its establishment, the Court has opened 26 cases involving 41 suspects or accused, and has conducted investigations into 11 situations: Burundi, the Central African Republic I and II, Côte d'Ivoire, Darfur (Sudan), the Democratic Republic of the Congo, Georgia, Kenya, Libya, Mali and Uganda.

Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud was surrendered to the Court on 31 March 2018, pursuant to an arrest warrant for war crimes and crimes against humanity allegedly committed in Timbuktu, Mali. Two arrest warrants were issued against Mahmoud Mustafa Busayf Al-Werfalli for murder as a war crime allegedly committed in Libya, but he remains at large.

Presentation of evidence concluded in the trial of Bosco Ntaganda, with closing arguments to follow. In the *Laurent Gbagbo and Charles Blé Goudé* case, the Prosecution concluded its presentation of evidence. In the case of Dominic Ongwen, the Prosecution and the Legal Representatives of Victims concluded the presentation of evidence.

The Appeals Chamber issued its judgment on Jean-Pierre Bemba Gombo's appeal against his conviction on charges of war crimes and crimes against humanity, reversing his conviction and acquitting him on all counts. The Appeals Chamber also issued judgment in *Bemba et al.*, the Court's first case relating to offences against the administration of justice, in compliance with article 70 of the Rome Statute. The Appeals Chamber confirmed convictions against all five accused for giving false testimony and/or corruptly influencing witnesses, and reversed convictions on other counts for three accused.

In addition to its investigations, the Office of the Prosecutor is currently conducting nine preliminary examinations. During the reporting period, the Office opened two new preliminary examinations of the situations in the Philippines and the Bolivarian Republic of Venezuela; continued the preliminary examinations of the situations in Colombia, Gabon, Guinea, Iraq/the United Kingdom of Great Britain and Northern Ireland, Nigeria, Ukraine and the State of Palestine; closed the preliminary

examination of the situation on registered vessels of the Comoros, Greece and Cambodia; completed the preliminary examination of the situation in Burundi, obtaining authorization to proceed with an investigation; and completed the preliminary examination of the situation in Afghanistan, requesting authorization to open an investigation.

The Court continued to receive highly valuable and appreciated cooperation from the United Nations on a wide range of issues on a reimbursable basis, notably operational assistance in the field. The cooperation, assistance and support of States parties and other States remained equally important to the Court's operations.

Requests for arrest and surrender issued by the Court remain outstanding against 15 individuals:

(a) Democratic Republic of the Congo: Sylvestre Mudacumura, since 2012;

(b) Uganda: Joseph Kony and Vincent Otti, since 2005;

(c) Darfur: Ahmad Harun and Ali Kushayb, since 2007; Omar Al-Bashir, since 2009 and 2010; Abdel Raheem Muhammad Hussein, since 2012; and Abdallah Banda, since 2014;

(d) Kenya: Walter Barasa, since 2013; and Paul Gicheru and Philip Kipkoech Bett, since 2015;

(e) Libya: Saif Al-Islam Gaddafi, since 2011; Al-Tuhamy Mohamed Khaled, since 2013; and Mahmoud Mustafa Busayf Al-Werfalli, since 2017;

(f) Côte d'Ivoire: Simone Gbagbo, since 2012.

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I. Introduction

1. The present report, covering the period from 1 August 2017 to 31 July 2018, is submitted in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court (see A/58/874, annex, and A/58/874/Add.1). Detailed information on the Court's activities is available on the Court's website.[1]

II. Update on judicial and prosecutorial activities

A. Situations and cases

2. In total, 12,509 victims participated in cases before the Court during the reporting period. The Court received a total of 384 new victim applications: 118 for reparations, 4 for participation and 262 for participation and reparations. The Court also received follow-up information for 2,412 existing applications, as well as 797 victim representation forms, in compliance with article 15 (3).

1. Situation in the Democratic Republic of the Congo

(a) Judicial proceedings

The Prosecutor v. Thomas Lubanga Dyilo

3. Mr. Lubanga is currently serving the remainder of his sentence in the Democratic Republic of the Congo. In accordance with article 110 (3) of the Rome Statute of the International Criminal Court, a panel of three judges of the Appeals Chamber reviewed his sentence for a second time. On 3 November 2017, the panel found that there were no significant changes in circumstances that would merit reducing Mr. Lubanga's sentence, which will expire on 15 March 2020.

4. On 15 December 2017, Trial Chamber II issued a decision setting Mr. Lubanga's liability for collective reparations at $10 million. The Chamber concluded that, of the 473 applications received, 425 met the requirements to benefit from collective reparations, but that further evidence indicated the existence of hundreds or even thousands of additional victims. On 15 January 2018, Mr. Lubanga's defence and one of the Legal Representatives of Victims claiming reparations filed appeals against the decision. The appeal is ongoing.

The Prosecutor v. Germain Katanga

5. On 25 and 26 April 2017, Mr. Katanga's defence, the Office of Public Counsel for Victims and the legal representatives of the majority of victims claiming reparations filed appeals against the reparations order of Trial Chamber II of 24 March 2017, by which the Chamber had awarded individual and collective reparations to victims of crimes of which Mr. Katanga had been convicted and set his liability at $1 million. On 8 March 2018, the Appeals Chamber partially confirmed the reparations order and remanded to Trial Chamber II consideration of five reparations applicants who alleged transgenerational psychological harm. On 19 July 2018, Trial Chamber II dismissed those applications, finding that the applicants had not established, to the requisite standard of proof, the causal nexus between the harm and the crimes of which Mr. Katanga had been convicted.

6. Trial Chamber II remains seized of the implementation of its reparations order and partially approved the draft implementation plan of the Trust Fund for Victims.

[1] www.icc-cpi.int.

The Prosecutor v. Bosco Ntaganda

7. Following the closure of the Prosecution's case on 29 March 2017, Trial Chamber VI denied the request by the defence to file a "no case to answer" motion. On 5 September, the Appeals Chamber ruled on an interlocutory appeal and confirmed the decision, finding no error in the exercise of discretion of Trial Chamber VI.

8. The defence closed its presentation of evidence on 23 February 2018, having called 12 witnesses, including Mr. Ntaganda. On 26 February, the Chamber rejected the request by the Prosecution to present evidence in rebuttal and, on 16 March, declared the presentation of evidence closed. Closing statements are scheduled for 28 to 30 August 2018.

(b) Investigations

9. The Office of the Prosecutor undertook 9 missions to three countries to collect evidence, screen and interview witnesses and secure continued cooperation. In addition, the Office requested that restrictions be lifted on the use of documents of the United Nations and other governmental and non-governmental sources at trial.

10. The Prosecutor visited the Democratic Republic of the Congo from 1 to 4 May 2018, where she met with President Joseph Kabila and political and judicial authorities to discuss the situation in the country, the status of national investigations and judicial proceedings related to alleged crimes that might fall within the International Criminal Court jurisdiction, and cooperation with the Office. She also met with religious leaders, representatives of political parties, civil society and the media, and other key interlocutors.

2. Situation in Uganda

(a) Judicial proceedings

The Prosecutor v. Dominic Ongwen

11. Mr. Ongwen's trial on 70 counts of crimes against humanity and war crimes continued during the reporting period. The presentation of evidence by the Prosecution concluded on 13 April 2018, and the Chamber received the testimony of 116 witnesses (69 viva voce and 47 written) during that presentation. The presentation of evidence by the Legal Representatives of Victims ran from 1 to 24 May, with seven viva voce witnesses. To date, the Chamber has recognized the formal submission of 4,271 items of evidence. The presentation by the defence will begin in the third quarter of 2018.

12. From 3 to 9 June 2018, the judges of Trial Chamber IX travelled to Uganda and visited the sites of alleged attacks, namely Pajule, Odek, Lukodi and Abok.

(b) Investigations

13. The Office of the Prosecutor conducted 30 missions to two countries in connection to the *Ongwen* case. The Office continued to encourage national proceedings in relation to both parties to the conflict. In March 2018, the Office contributed to a seminar in Kampala on addressing international crimes, sharing lessons learned and best practices with stakeholders from the law enforcement and justice sectors.

14. From 31 July to 8 August 2017, the Office of the Prosecutor and the Registry conducted a joint outreach mission to Uganda and met with affected communities, including cultural and religious leaders and civil society representatives. Court representatives provided updates on the Ongwen trial, building on extensive outreach activities undertaken through the Court's field presence during the reporting period.

3. Situation in the Central African Republic

(a) Judicial proceedings

The Prosecutor v. Jean-Pierre Bemba Gombo

15. On 8 June 2018, the Appeals Chamber issued judgments on Mr. Bemba's appeal against conviction and sentence, reversing his conviction for the crimes against humanity of murder and rape, and for the war crimes of murder, rape and pillaging of which Trial Chamber III had found him responsible as a military commander, pursuant to article 28 (a) of the Rome Statute. The Chamber acquitted Mr. Bemba on all counts, in particular owing to errors in the conclusion of Trial Chamber III that he had failed to take all necessary and reasonable measures in response to crimes committed by troops of the Mouvement de libération du Congo.

16. That same day, the Appeals Chamber dismissed the appeals against the sentencing of Trial Chamber III, finding that the decision ceased to have any effect following Mr. Bemba's acquittal. Mr. Bemba was not immediately released, however, as his continued detention was required in relation to offences against the administration of justice.

The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido

17. On 8 March 2018, the Appeals Chamber issued its judgment on the appeals of the five convicted persons in the Court's first case relating to offences against the administration of justice, pursuant to article 70 of the Rome Statute. The Chamber confirmed convictions for giving false testimony and corruptly influencing witnesses, as provided under article 70, paragraphs (1) (a) and (c), of the Rome Statute and reversed the convictions of Messrs. Bemba, Kilolo and Mangenda for presenting evidence that the party had known was false or forged, as provided under article 70 (1) (b).

18. The same day, the Appeals Chamber ruled on the appeals by the convicted persons and by the Prosecutor against the sentences imposed by Trial Chamber VII. The sentences of 6 and 11 months of imprisonment of Messrs. Babala and Arido, respectively, were confirmed. On the basis of the Prosecutor's appeal, the Appeals Chamber reversed the sentences of Messrs. Bemba, Kilolo and Mangenda and, noting that their convictions had been partially reversed, remanded the determination of new sentences to Trial Chamber VII.

19. Following the Appeals Chamber's acquittal of Mr. Bemba in the main case, on 15 June 2018, Trial Chamber VII ordered Mr. Bemba's provisional release with specific conditions for the remainder of the resentencing proceedings.

(b) Investigations

20. The Office of the Prosecutor conducted 98 missions to 11 countries in connection to its two active investigations conducted in the Central African Republic. Cooperation with the Central African authorities and those of neighbouring countries, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic and several United Nations entities remains key. In line with its strategic goal 9, the Office shared expertise and best practices with Central African judicial actors, including the Special Criminal Court.

4. Situation in Darfur

(a) *Judicial proceedings*

The Prosecutor v. Omar Hassan Ahmad Al-Bashir

21. On 11 December 2017, Pre-Trial Chamber II found that Jordan had failed to comply with its obligations under the Rome Statute by failing to arrest Omar Al-Bashir and surrender him to the Court while he was on Jordanian territory, and referred the matter to the Assembly of States Parties and the Security Council. The Chamber recalled that the Court's jurisdiction in this case had been triggered by Council resolution 1593 (2005), whereby the Council, acting under Chapter VII of the Charter of the United Nations, had referred the situation in Darfur to the Prosecutor of the International Criminal Court.

22. Having obtained leave to appeal, on 12 March 2018, Jordan filed its brief against the decision of Pre-Trial Chamber II. This is the first time in the Court's history that the Appeals Chamber is seized of an appeal concerning the legal obligations of States and immunities (if any) available to Heads of State under articles 27 and 98 of the Rome Statute, customary international law and resolution 1593 (2005). The Appeals Chamber received 11 *amici curiae* observations from professors of international law, the African Union, and the League of Arab States. A hearing on this important matter for the Court's jurisprudential development is scheduled for 10 to 12 September 2018.

(b) *Investigations*

23. The Office of the Prosecutor conducted 35 missions to 18 countries to collect documentary and other evidence and conduct witness interviews, as it continued to monitor trends that might constitute crimes under the Rome Statute. As highlighted in the reports of the Office to the Security Council, despite the non-execution of the arrest warrants, lack of effective support from the Council and a dearth of resources, long-term investigation initiatives are yielding important evidence that supplements and strengthens the ongoing cases.

5. Situation in Kenya

Investigations

24. The Office of the Prosecutor continued to receive information on the alleged commission of crimes against humanity during the post-election violence of 2007–2008, and to investigate alleged instances of offences against the administration of justice, in accordance with article 70 of the Rome Statute.

6. Situation in Libya

(a) *Judicial proceedings*

The Prosecutor v. Saif Al-Islam Gaddafi

25. On 5 June 2018, Saif Al-Islam Gaddafi challenged the admissibility of the case, pursuant to articles 17 (1) (c), 19 and 20 (3) of the Rome Statute. On 14 June, Pre-Trial Chamber I issued its decision on the conduct of the proceedings with regard to the admissibility challenge.

The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli

26. The first arrest warrant against Mr. Al-Werfalli was requested by the Prosecutor on 1 August 2017 and was issued on 15 August by Pre-Trial Chamber I. Mr. Al-Werfalli is suspected of having directly committed and ordered murder as a war crime in seven

incidents (involving 33 persons) from 3 June 2016 or before until 17 July 2017 or thereabouts in Benghazi and surrounding areas.

27. On 4 July 2018, Pre-Trial Chamber I issued a second arrest warrant against Mr. Al-Werfalli for alleged murder as a war crime in the context of an eighth incident that occurred on 24 January 2018, when he allegedly killed 10 persons outside the Bi'at al-Radwan mosque in Benghazi, Libya. The Prosecutor made public calls for his immediate arrest and surrender to the Court, including at the Security Council, which had referred the situation in Libya to the Prosecutor of the International Criminal Court in its resolution 1970 (2011).

(b) Investigations

28. The Office of the Prosecutor conducted 40 missions to 11 countries. As highlighted in the reports of the Office to the Security Council, the Office continued to advance investigations relating to both existing and potential new cases. The Office worked in close cooperation with Libya and other States, as well as the United Nations Support Mission in Libya and other international organizations.

29. Thanks to that support, the Office was able to conduct its first visit to Libya in more than five years, despite the challenging security situation, which limits possibilities for in situ investigations.

7. Situation in Côte d'Ivoire

(a) Judicial proceedings

The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé

30. The presentation of evidence by the Prosecution concluded on 19 January 2018 with the testimony of the last of 82 witnesses before Trial Chamber I. A hearing concerning the continuation of the trial proceedings is scheduled for 1 October 2018.

(b) Investigations

31. The Office of the Prosecutor conducted 47 missions to nine countries, as it continued to investigate crimes allegedly committed by all parties to the conflict during the post-election period.

8. Situation in Mali

(a) Judicial proceedings

The Prosecutor v. Ahmad Al Faqi Al Mahdi

32. On 27 September 2016, Trial Chamber VIII found Mr. Al Mahdi guilty of the war crime of attacking historic and religious buildings in Timbuktu and sentenced him to nine years of imprisonment.

33. On 17 August 2017, Trial Chamber VIII issued its reparations order, determining that Mr. Al Mahdi's acts had caused physical damage to protected buildings, as well as economic and moral harm, resulting in total liability of €2.7 million.

34. On 18 September 2017, the Legal Representatives of Victims appealed the reparations order. On 8 March 2018, the Appeals Chamber issued its judgment, amending the order to allow the consideration of applicants who did not wish their identities to be disclosed to the convicted person and to provide for the possibility that applicants may request judicial review of negative screening process outcomes. In other respects, the reparations order was confirmed.

35. On 12 July 2018, despite certain reservations and subject to amendments and further directions, Trial Chamber VIII approved the draft implementation plan of the Trust Fund for Victims following the reparations order. The Trust Fund is to file an updated implementation plan with selected projects.

The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

36. On 27 March 2018, Pre-Trial Chamber I issued an arrest warrant against Mr. Al Hassan for war crimes and crimes against humanity allegedly committed in 2012 and 2013 in Timbuktu. He was surrendered to the Court on 31 March 2018 and first appeared before Pre-Trial Chamber I on 4 April. On 24 May, the Chamber issued a decision establishing principles for victims' applications for participating in the proceedings. A confirmation of charges hearing is scheduled for 24 September 2018.

(b) Investigations

37. The Office of the Prosecutor conducted 25 missions to four countries to investigate alleged crimes in this situation. It continued to work in cooperation with the national authorities and other actors, including United Nations entities — in particular the United Nations Multidimensional Integrated Stabilization Mission in Mali and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

9. Situation in Georgia

Investigations

38. The Office of the Prosecutor conducted 32 missions to eight countries, as it continued to investigate crimes allegedly committed in Georgia. The Office continued to call upon all parties to cooperate with its investigations, including the Russian Federation and South Ossetia, and welcomed the efforts of those that had done so.

10. Situation in Burundi

(a) Judicial proceedings

39. On 25 October 2017, Pre-Trial Chamber III issued its decision to authorize the Prosecutor to open an investigation into crimes allegedly committed in Burundi or by Burundian nationals outside Burundi between 26 April 2015 and 26 October 2017. The Prosecutor was authorized to extend her investigation to crimes committed before 26 April 2015 or continued after 26 October 2017, if certain legal requirements were met. In its decision, the Chamber found a reasonable basis to believe that a widespread and systematic attack against the Burundian civilian population had been carried out pursuant to a State policy to supress dissenting views.

(b) Investigations

40. The Office of the Prosecutor conducted 24 missions to seven countries in connection to investigations into the crimes allegedly committed in relation to the situation in Burundi.

11. Situation in Afghanistan

Investigations

41. On 20 November 2017, the Prosecutor requested authorization from Pre-Trial Chamber III to initiate an investigation into alleged crimes in relation to Afghanistan. The Court received 797 forms communicating victims' views with respect to the Prosecutor's request, following the Chamber's order to the Registry of 9 November

2017 concerning victims' representation, pursuant to article 15 (3). The situation was reassigned to Pre-Trial Chamber II in March 2018, and the Prosecutor's request is pending.

12. Situation on registered vessels of the Comoros, Greece and Cambodia

Judicial proceedings

42. On 26 February 2018, the Government of the Comoros presented before Pre-Trial Chamber I its request for judicial review of the decision taken by the Prosecutor on 29 November 2017 on the situation on registered vessels of the Comoros, Greece and Cambodia. On 2 March 2018, Pre-Trial Chamber I issued a decision establishing timelines for submissions in relation to that request.

13. Other judicial proceedings

43. On 9 April 2018, the Prosecutor submitted a request for a ruling on jurisdiction, in accordance with article 19 (3) of the Rome Statute, asking the Pre-Trial Chamber whether the Court might exercise jurisdiction on the alleged deportation of Rohingyas from Myanmar to Bangladesh.

44. On 7 May 2018, Pre-Trial Chamber I issued a decision inviting Bangladesh to submit observations on the Prosecutor's request. On 29 May and 7, 11, and 14 June, the Chamber issued various decisions on requests to submit *amici curiae* observations in relation to the Prosecutor's request. On 20 June, the Office of the Prosecutor appeared before the Pre-Trial Chamber in a closed hearing and the Chamber issued a decision the following day, inviting Myanmar to submit observations.

B. Preliminary examinations

45. During the reporting period, the Office of the Prosecutor conducted the preliminary examinations of 12 situations, of which 3 were closed or completed. On 4 December 2017, the Office issued a report on its preliminary examination activities, in which further details of these key activities of the Office can be found.

46. The Office continued to analyse information received on the alleged commission of crimes potentially falling within its jurisdiction. From 1 August 2017 to 30 June 2018, the Office registered 517 communications submitted in accordance with article 15 of the Rome Statute, of which 332 were manifestly outside the Court's jurisdiction, 30 were unrelated to current situations and warranted further analysis, 113 were linked to a situation already under analysis and 42 were linked to an investigation or prosecution.

1. Afghanistan

47. On 20 November 2017, the Office of the Prosecutor completed its preliminary examination and requested authorization from Pre-Trial Chamber III to proceed with an investigation into the situation in Afghanistan in the period since 1 July 2002, including crimes with a nexus to the armed conflict in Afghanistan and those sufficiently linked to the situation that had been allegedly committed on the territory of other States parties to the Rome Statute since 1 July 2002.

2. Burundi

48. On 5 September 2017, the Office of the Prosecutor completed its preliminary examination of the situation in Burundi and requested authorization from Pre-Trial Chamber III to proceed with an investigation into the situation in that country since 26 April 2015. The authorization was granted on 25 October 2017.

3. Colombia

49. The Office of the Prosecutor continued to engage with the Colombian authorities to obtain additional details on relevant genuine investigative steps and prosecutorial activities undertaken by national authorities. The Prosecutor conducted her first visit to Bogotá from 10 to 13 September 2017, where she met with senior executive and judicial officials, including President Juan Manuel Santos. At the invitation of the President of the Constitutional Court of Colombia, on 18 October 2017, the Prosecutor submitted an *amicus curiae* brief summarizing the Office's views on certain aspects of Legislative Act No. 01 of 2017 and Law No. 1820 (the so-called "Amnesty Law"). The Office conducted further missions to Colombia in March and May 2018.

4. Gabon

50. Following the Gabonese authorities' referral of 21 September 2016, the Office of the Prosecutor continued its preliminary examination of the situation in Gabon since May 2016 to determine whether there was a reasonable basis to believe that crimes allegedly committed in that country in connection with the presidential election of 27 August 2016 fell within the Court's subject-matter jurisdiction.

5. Guinea

51. Following its finding of a reasonable basis to believe that crimes against humanity had been committed during the events in the Conakry stadium on 28 September 2009, the Office of the Prosecutor continued to assess the Guinean authorities' efforts to conduct genuine national proceedings in relation to those events. In February 2018, the Office conducted its 15th mission to Conakry. It continued to monitor any obstacles to genuine accountability and, in coordination with other stakeholders, such as the Guinean authorities, civil society organizations, victims' legal representatives and the diplomatic community in Conakry, including the United Nations, to support the organization of a fair and impartial trial, respectful of the rights of the accused and of the victims.

6. Iraq/United Kingdom of Great Britain and Northern Ireland

52. Following its previous conclusion that there was a reasonable basis to believe that members of the armed forces of the United Kingdom had committed war crimes against persons in their custody that fell under the Court's jurisdiction, the Office of the Prosecutor has been undertaking an assessment of admissibility, including complementarity and gravity. To that end, the Office continued to engage with the relevant national authorities, including through high-level meetings.

7. Nigeria

53. The Office of the Prosecutor analysed information on a variety of alleged crimes in different contexts, including alleged sexual and gender-based crimes in the armed conflict between Boko Haram and the Nigerian security forces, as well as alleged killings in the north-west and north-central regions of Nigeria, and continued to gather information on national proceedings relating to the eight potential cases identified by the Office in 2015.

54. From 20 to 24 May 2018, the Office conducted a technical mission to Abuja and, on 17 July, the Prosecutor met with the Minister of Justice and Attorney-General of Nigeria to provide him with an update on progress in the preliminary examination.

8. State of Palestine

55. The Office of the Prosecutor continued to analyse information pertaining to the Court's jurisdiction in Palestine, as well as crimes allegedly committed by both parties to the conflict in Gaza in 2014 and crimes allegedly committed in the West Bank, including East Jerusalem, since 13 June 2014. The Office held multiple meetings at the Court with relevant stakeholders, including government officials and civil society representatives.

56. On 8 April, the Prosecutor issued a statement expressing concern over violence reportedly committed in the context of demonstrations along the Gaza border.

57. In May 2018, the Office received a referral from the Government of the State of Palestine, in accordance with articles 13 (a) and 14 of the Rome Statute, regarding the situation in Palestine since 13 June 2014. On 13 July, Pre-Trial Chamber I issued a decision on information and outreach for victims of the situation.

9. Ukraine

58. Subsequent to the second declaration by Ukraine, lodged on 8 September 2015, in accordance with article 12 (3) of the Rome Statute, in which it accepted the Court's exercise of jurisdiction from 20 February 2014, the Office of the Prosecutor continued to analyse whether alleged crimes relating to the situations in Crimea and eastern Ukraine fell within the Court's jurisdiction.

59. The Office received further information from the Government of Ukraine, non-governmental organizations and other actors, and continued to engage with State authorities and intergovernmental and non-governmental organizations with regard to the preliminary examination, both through consultations held at the Court and during two missions to Ukraine conducted from 14 to 16 September 2017 and from 18 to 21 June 2018, respectively.

10. Registered vessels of the Comoros, Greece and Cambodia

60. Following the request by Pre-Trial Chamber I that the Prosecutor reconsider her decision of 6 November 2014 not to open an investigation, the Office of the Prosecutor thoroughly reviewed all available information that had informed that decision and, on 29 November 2017, the Prosecutor reaffirmed the decision.

11. Bolivarian Republic of Venezuela

61. On 8 February 2018, the Office of the Prosecutor initiated a preliminary examination of the situation in the Bolivarian Republic of Venezuela in relation to crimes allegedly committed in the country since at least April 2017 in the context of demonstrations and political unrest.

62. The Office analysed reports of people killed or injured during the demonstrations, and the reported arrest and detention of thousands of actual or perceived opposition members, a number of whom had allegedly been subjected to serious abuse and ill-treatment in detention. The Office engaged and sought information from a variety of sources and stakeholders, including national authorities and civil society.

12. Philippines

63. The Office of the Prosecutor initiated a preliminary examination of the situation in the Philippines on 8 February 2018 in relation to crimes allegedly committed in the country since 1 July 2016 in the context of the Government's "war on drugs" campaign. The Office received and analysed numerous communications and public reports concerning killings allegedly carried out as part of the campaign, and interacted with relevant stakeholders.

III. International cooperation

A. Cooperation with the United Nations

1. General cooperation with United Nations Headquarters

64. As provided in the Relationship Agreement between the United Nations and the International Criminal Court concluded in 2004, relations between the United Nations and the Court are based on respect for each other's status and mandates, and are aimed at promoting the discharge of the organizations' respective responsibilities in a mutually beneficial manner. The Agreement establishes the framework for many forms of cooperation, including information exchange, the provision of services and facilities, judicial assistance, the appearance of United Nations staff in court to provide testimony and field support. Specific forms of cooperation are negotiated and provided through supplementary agreements.

65. The Court continued to receive crucial support and cooperation from the United Nations senior leadership. The Court is grateful for the Secretary-General's support, as reaffirmed during, inter alia, his visit to the Court on 21 December 2017. The Court also recognizes the critical cooperation of the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel as the interface between the Court and the United Nations, in particular in the transmission and coordination of judicial cooperation requests. The Court continued to finance a P-3 Legal Officer position within the Office of Legal Affairs to handle the work generated through the cooperation between the United Nations and the Court.

66. Various United Nations entities, departments, offices and special advisers and representatives of the Secretary-General provided operational support to the Court during the reporting period. The Court's leadership held high-level consultations with senior United Nations officials, including the Secretary-General, the Deputy Secretary-General and the President of the General Assembly.

67. The Prosecutor's biannual briefings to the Security Council relating to the situations in Darfur and Libya provided opportunities to inform the Council and the States Members of the United Nations of progress and challenges with those investigations, especially the failure to execute outstanding arrest warrants.

68. An annual International Criminal Court-United Nations round table was held in New York on 6 and 7 December 2017. A large number of United Nations offices, agencies, funds and programmes participated, in addition to different parts of the Court. The programme included updates on activities, exchanges of best practices in mutual cooperation and discussions on building the capacity of national jurisdictions.

69. Facilities and services provided by the United Nations on a reimbursable basis allowed the Assembly of States Parties to hold its sixteenth session at United Nations Headquarters, from 4 to 14 December 2017.

70. Although the Court is not a party to the Inter-Organization Agreement concerning Transfer, Secondment or Loan of Staff among the Organizations applying the United Nations Common System of Salaries and Allowances, it voluntarily supports the movement of personnel in accordance with the provisions of the Agreement. During the reporting period, four staff members were on loan or secondment to the Court from other tribunals or international organizations, while six staff members of the Court were on loan or secondment to other tribunals or international organizations.

71. The Court continued to cooperate with United Nations common system organizations by participating in inter-agency meetings on facilities management, travel and security.

72. The representation of the Court at the United Nations via a small liaison office in New York continued to play an important role in facilitating communication between the two organizations, as well as between the Court and permanent and observer missions to the United Nations.

2. Cooperation with peacekeeping missions and other United Nations entities present in the field

73. The Court continued to benefit from cooperation from United Nations entities present in the field, in accordance with their mandate and with the agreement of host States. The Court highly appreciates such cooperation, which is essential for its operations.

74. During the reporting period, the Court completed the recruitment of chiefs of office for its field offices. This has enhanced the capacity of those offices to engage with national authorities and local communities, as well as to cooperate with the United Nations and other international stakeholders.

75. The Court opened its field office in Georgia in December 2017 to maintain contact with stakeholders on the ground, including United Nations entities; provide operational, logistic and diplomatic support to various organs of the Court; and conduct outreach activities.

76. The Court continued to participate in the United Nations security management system and relied on United Nations missions to provide services, such as transportation, radio and video communication, medical assistance and security briefings, as well as security training, information-sharing and risk-management resources.

3. Cooperation with the Security Council

77. The Court and the Security Council have different yet complementary roles in addressing the gravest crimes of concern to the international community, which have a potential to destabilize international peace and security. The Council's prerogative to refer a situation to the Court can help to promote accountability in countries where grave crimes may have been committed but where the Court has no jurisdiction. Where the Council has made such a referral, active follow-up is necessary to ensure cooperation with the Court, especially regarding the arrest and surrender of individuals subject to arrest warrants. Following the Darfur and Libya referrals, the Court has communicated to the Council a total of 15 findings of State non-cooperation; however, the Council has failed to respond, in any substantive form, to those communications.

78. The Court believes that a structured dialogue between the Court and the Council on matters of mutual interest, both thematic and situation-specific, could improve the implementation of Council referral resolutions and enhance the fight against impunity.

79. It is in that spirit that, on 6 July 2018, the States parties to the Court that sat on the Council convened an Arria-formula meeting on relations between the Council and the Court, the first of this nature. Participants included the Court Prosecutor, the President of the Assembly of States Parties, the Assistant Secretary-General for Legal Affairs, the Permanent Representative of Mali to the United Nations and the Special Prosecutor of the Special Criminal Court of the Central African Republic. The meeting also included representatives of member States of the Council, other Member

States and civil society. The objectives of the meeting were to take stock of the Court's activities, including achievements and challenges, and to explore synergies with the Council's work. The initiative was welcomed as an important step towards enhanced ca of the Court's work and the broad support that it enjoys. Participants in the meeting raised concrete issues and proposals in the context of relations between the Council and the Court, such as improving responses to non-cooperation findings (e.g. the proposal by New Zealand in December 2015 for a more structured consideration by the Council of such findings), enhancing the mandates of peacekeeping missions and bolstering Council support for national capacity-building. Participants highlighted the necessity of Council support for the Court's work.

80. The Court remains keen to strengthen cooperation and coordination with the Council in a number of specific areas that could have a positive impact on the pursuit of the common goals of the Council and the Court, notably in relation to sanctions committees, travel bans and the freezing of assets, as discussed in paragraphs 92 to 95 of the Court's previous annual report (A/72/349).

4. Mainstreaming the International Criminal Court in the United Nations system

81. The Court greatly appreciates the acknowledgments and espousals of support for its activities contained in resolutions, declarations and other documents adopted by the General Assembly, the Security Council and other United Nations organs, committees and commissions. The Court also values opportunities for its senior officials to participate in relevant United Nations meetings, such as those related to the rule of law, international criminal and humanitarian law, transitional justice, sexual violence in conflict, children and armed conflict, peacebuilding, sustainable development and the responsibility to protect.

82. In September 2017, the Prosecutor participated in the seventy-second General Assembly session, a unique cost-effective opportunity to advance the work of her Office, as well as to strengthen support for the Court and further mainstream its mandate. The Prosecutor held 15 bilateral meetings with Heads of State, high-level representatives of States and United Nations representatives. She also participated in the annual meeting of the informal ministerial network of the Court, as well as a discussion on the responsibility to protect cultural heritage from terrorism and mass atrocities convened by the Permanent Mission of Italy to the United Nations, the European Union, UNESCO, the United Nations Office on Drugs and Crime and the Global Centre for the Responsibility to Protect.

83. On 6 November 2017, recognizing the importance of protecting cultural heritage from attacks in time of conflict, the Court Prosecutor and the Director General of UNESCO signed a letter of intent to formalize and further enhance the collaboration of the Office of the Prosecutor and UNESCO, in line with their respective mandates.

84. Considering the primary responsibility of national jurisdictions to investigate and prosecute Rome Statute crimes, the Court strongly encourages the inclusion of related capacity-building elements in legal and judicial reform programmes supported by the United Nations in the context of its assistance to the development of the rule of law, as well as the implementation of Sustainable Development Goal 16. This may include incorporating into national law the Rome Statute crimes and principles, establishing or enhancing national processes for cooperation with the Court and training legal professionals on international investigations and prosecutions, in particular in the context of United Nations peacekeeping operation mandates to support justice and correctional institutions in post-conflict settings. United Nations entities are encouraged to consider drawing on the Court's expertise for such activities.

5. United Nations assistance to counsel

85. The Registry continued to receive, with appreciation, support from the United Nations to counsel. This continued assistance and the inclusion of related provisions in agreements between the Court and the United Nations are of particular importance in the light of the principle of equality of arms.

B. Cooperation with and assistance from States, other international organizations and civil society

1. Judicial assistance

86. During the reporting period, the Registry transmitted 674 requests for visas to States. The Registry also transmitted 104 requests for cooperation to States parties, other States and international and regional organizations, in addition to following up on pending requests.

87. In connection with its investigative and prosecutorial activities, the Office of the Prosecutor addressed 556 requests for assistance (an increase of 33.65 per cent from the previous reporting period) to more than 58 partners, including States parties, non-States parties, international and regional organizations and other public or private entities, in addition to following up on the execution of pending requests.

88. States continued to provide logistical support, including facilitating the appearance of witnesses via video link, the appearance of detained witnesses and investigative and related missions. States provided, through the Registry, assistance to defence teams in support of their investigative activities, including by giving access to documents and other information and by issuing visas and facilitating family visits for their clients. States also provided various forms of assistance to legal representatives of victims. All those forms of assistance are appreciated as contributing to the efficiency and fairness of proceedings before the Court.

89. As demonstrated by the list of outstanding warrants in the summary of the present report, the arrest and surrender of individuals subject to Court warrants remain a critical challenge. The Court appreciates any efforts made by States parties or others to help to ensure the timely arrest and surrender of those individuals. This includes tracking efforts, the identification of potential leverage and partners, and operational support.

90. The Court continued to encourage States to conclude cooperation agreements with the Court regarding receiving detained persons during interim release or subsequent to their final release, enforcing sentences of imprisonment pronounced by the Court and relocating witnesses. During the reporting period, Argentina signed agreements on interim release and final release, becoming the first State party to conclude all four cooperation agreements with the Court. In total, the Court has entered into 10 enforcement agreements, two interim-release agreements, one release-of-persons agreement, and 19 witness-relocation agreements.

91. The Registry and the Office of the Prosecutor continued their efforts to further enhance cooperation with national, regional and international law enforcement networks in support of the Court's needs, and to assist with national proceedings, when appropriate, in accordance with the principle of complementarity. The Registry and the Office continued to work closely together to develop a network of partners to foster information exchange and cooperation in the identification, freezing and seizure of assets.

92. The conference entitled "The International Criminal Court and International Cooperation: The Challenges of Asset Recovery", held in October 2017 in Paris,

provided a forum to discuss challenges and ways to enhance cooperation and coordination between the Court and States in that area. In December 2017, the Assembly of States Parties endorsed the declaration adopted at the conference. In addition, the Court developed a booklet explaining its processes for financial investigations and the recovery of assets.[2]

2. International Criminal Court cooperation seminars

93. Generous financial contributions from the European Commission, the Netherlands and the International Organization of la Francophonie (OIF) enabled the Court to organize 11 high-level and technical events during the reporting period, including high-level regional Court cooperation seminars in Ecuador and the Niger, the latter of which also included a technical workshop led by Parliamentarians for Global Action on aligning national law with the Rome Statute; a seminar with African States parties in Addis Ababa, with close cooperation and support from OIF; a side event at the forty-eighth meeting of the Pacific Islands Forum, entitled "Membership in the Rome Statute — Why and How?", in Apia; a conference on financial investigations and asset recovery in Paris; the annual seminar for International Criminal Court focal points from situation countries; one training session for judges of the Special Criminal Court in Bangui; and one technical seminar on victims and witness protection.

94. On 18 January 2018, the Court, for the first time, held a ceremony for the opening of the judicial year, with the President of Trinidad and Tobago as the keynote speaker, and a judicial seminar, entitled "Complementarity and Cooperation of National, Regional and International Courts". The seminar gathered chief justices and other senior judges from 25 States, several regional and international courts and the International Criminal Court. An extended programme was organized for judges from International Criminal Court situation countries.

95. Collectively, those activities brought together in excess of 400 participants from more than 120 States and other entities, strengthening the Court's capacity to implement its mandate thanks to improved judicial cooperation, heightened diplomatic support and greater awareness of its mandate and activities. The Court is grateful to host countries, partner organizations, donors and participating experts for their valuable support and contributions.

3. Cooperation with other international and regional organizations

96. The Court continued to develop its interaction and cooperation with international and regional organizations, which are key partners for such priorities as promoting the universality of the Rome Statute and the adoption of national implementing legislation, and enhancing cooperation. The Court believes that further engagement with regional organizations can help to raise awareness of its work, dispel misconceptions and encourage wider geographical representation in its staff.

4. Cooperation with civil society

97. The Court continued to engage actively with civil society partners and hosted the twenty-second annual round table with non-governmental organizations, from 14 to 18 May 2018, to discuss issues of common interest.

98. The Court greatly values, and continued to participate in, the activities of civil society partners to promote awareness of and cooperation with the Court, as well as the universality and full implementation of the Rome Statute.

[2] Available at www.icc-cpi.int/news/seminarBooks/Freezing_Assets_Eng_Web.pdf.

IV. Institutional developments

A. Treaty matters

99. At its sixteenth session, the Assembly of States Parties decided, by consensus, to activate the jurisdiction of the Court over the crime of aggression as of 17 July 2018.

100. The Assembly of States Parties also adopted three amendments to article 8 of the Rome Statute, relating to the use of microbial, biological or toxin weapons; weapons that injure by fragments undetectable by X-rays; and laser-blinding weapons. The amendments are subject to ratification or acceptance.

101. During the reporting period, two States parties ratified the previous amendment to article 8, adopted in 2010; one State party ratified the amendments on the crime of aggression; and five States parties ratified the amendment to article 124, bringing the total number of parties to those amendments to 36, 35 and 10, respectively.

102. The withdrawal of Burundi from the Rome Statute took effect on 27 October 2017. On 17 March 2018, the Philippines submitted a notification of withdrawal from the Rome Statute to the Secretary-General, pursuant to article 127. The withdrawal will take effect on 17 March 2019.

B. Elections and appointments

103. At its sixteenth session, the Assembly of States Parties held a regular election of six judges for nine-year mandates. Judges Luz del Carmen Ibáñez Carranza, Solomy Balungi Bossa, Tomoko Akane, Reine Alapini-Gansou, Kimberly Prost and Rosario Salvatore Aitala were sworn in on 9 March 2018 and assumed full-time duty on 10 June. The Assembly of States Parties also elected, by acclamation, O-Gon Kwon as President of the Assembly for a three-year mandate, starting 15 December 2017.

104. On 11 March 2018, the Court's judges elected Judge Chile Eboe-Osuji as President of the Court for a three-year term, with immediate effect. Judges Robert Fremr and Marc Perrin de Brichambaut were elected First and Second Vice-President, respectively.

105. On 28 March 2018, the judges elected Peter Lewis as Registrar for a five-year term, starting 17 April.

C. Trust Fund for Victims

106. The Trust Fund for Victims is at the implementation stage with regard to the reparations orders in the *Lubanga* and *Katanga* cases in the Democratic Republic of the Congo, and the *Al Mahdi* case in Mali. The Trust Fund highly appreciates the assistance and cooperation received from United Nations entities and field offices in that context.

107. The Trust Fund continued activities under its assistance mandate. Together with locally based implementing partners in the Democratic Republic of the Congo and Uganda, the Trust Fund has assisted to date several hundred thousand direct and indirect victims, through physical and psychological rehabilitation, as well as the provision of material support to survivors.

108. From 19 to 23 February 2018, the Trust Fund and the Government of Ireland led a joint monitoring field visit to northern Uganda. The delegation, comprised of the President of the Assembly of States Parties and of representatives of 10 States parties, observed first-hand the work of the Trust Fund in the field and met with community leaders, survivors, and locally based implementing partners of the Trust Fund.

109. On 13 June 2018, following Mr. Bemba's acquittal, the Board of Directors of the Trust Fund decided to bring forward the launch of the assistance programmes in the Central African Republic and to establish a starting capital of €1 million for that purpose. The Trust Fund also expects to commence a new assistance programme cycle in the Democratic Republic of the Congo and to start the assistance programmes in Côte d'Ivoire in 2018.

110. The Trust Fund calls upon all States and entities to make voluntary contributions to benefit victims and their families.

D. Commemoration of the twentieth anniversary of the Rome Statute

111. The twentieth anniversary of the Court's founding treaty, the Rome Statute, was commemorated officially on 17 July 2018 with a solemn hearing and a major high-level symposium at the Court. The President of Nigeria, speakers from national parliaments, ministers for foreign affairs and ministers of justice, the United Nations Legal Counsel and representatives of international and regional organizations, civil society and academia reflected on the enduring value of the Rome Statute and the International Criminal Court to humanity. More than 20 States parties from all regional groups were represented at a ministerial or comparable level; their statements, which underline the importance of the Court's mandate, are available on the International Criminal Court website.[3] In his keynote speech, the President of Nigeria stated that, with the alarming proliferation of the most serious crimes around the world, the International Criminal Court, and all that it stood for, was now needed more than ever, and that a strong and effective Court had the potential to send a powerful message about the international community's commitment to accountability, a message that would be heard by both victims and perpetrators. He urged all States that had not yet done so to, as a matter of deliberate State policy, accede to the Rome Statute so that it could become a universal treaty. The Executive Director of Human Rights Watch recalled in his remarks that ending impunity for mass atrocities was the best way to obtain redress for yesterday's victims and to prevent the recurrence of mass atrocities tomorrow.

112. The Court also participated in the high-level event entitled "20th Anniversary of the Rome Statute: The Need for Universality and the International Criminal Court's Jurisdiction over the Crime of Aggression", organized on 17 July 2018 at United Nations Headquarters. The same day, the Court and the Permanent Mission of the Netherlands hosted an event for the opening of a photography exhibition at United Nations Headquarters, entitled "Trauma, Healing and Hope", featuring photographs from Court situation countries by award-winning photographer Marcus Bleasdale. The exhibition was also displayed in The Hague in partnership with the municipality.

113. International Criminal Court field offices in situation countries will be hosting numerous outreach activities and events related to the twentieth anniversary throughout 2018.

114. Numerous States parties have organized events and activities marking the anniversary, and an overview of events is available on the website of the Assembly of States Parties.[4] Many non-governmental organizations also are commemorating the anniversary by creating opportunities for dialogue and reflection on the Rome Statute. The Coalition for the International Criminal Court launched its commemoration with an event at the Court, on 15 and 16 February 2018.

[3] See www.icc-cpi.int/romestatute20/Pages/20a-programme.aspx.

[4] https://asp.icc-cpi.int/EN_Menus/asp/pages/asp_home.aspx.

V. Conclusion

115. The Court had another year marked by significant developments in pretrial, trial, and reparations proceedings; appeals; and preliminary examinations and investigations. The cooperation and support provided by the United Nations and its various entities and funds, States and other entities are more important than ever, as the Court's activities continue to increase in number and scope.

116. The Assembly of States Parties activated the Court's jurisdiction over the crime of aggression, effective from 17 July 2018, coinciding with the twentieth anniversary of the adoption of the Rome Statute, the Court's founding treaty. Numerous events throughout the year will be commemorating the anniversary, generating strong calls for justice from States and civil society alike. It is hoped that these expressions of commitment manifest into concrete action to support the Court's mission, revitalizing the international community's efforts to ensure accountability for the gravest crimes under international law.

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Seventy-third session
Item 77 of the provisional agenda*
Report of the International Criminal Court

Information relevant to the implementation of article 3 of the Relationship Agreement between the United Nations and the International Criminal Court

Report of the Secretary-General

Summary

The present report is submitted pursuant to paragraph 12 of General Assembly resolution 72/3, by which the Assembly requested the Secretary-General to continue to include information relevant to the implementation of Article 3 of the Relationship Agreement between the United Nations and the International Criminal Court in a report to be submitted to the Assembly at its seventy-third session.

* A/73/150.

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1. Article 3 of the Relationship Agreement between the United Nations and the International Criminal Court provides as follows: "The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute".

2. During the period from 1 July 2017 to 30 June 2018, the United Nations cooperated extensively with the Court pursuant to the provisions of the Agreement. In October 2017, the United Nations marked the thirteenth anniversary of the entry into force of the Agreement. It continued to work closely with the Court in order to further strengthen its relationship and to ensure the effective implementation of the Agreement.

3. In the field of institutional relations, addressed in chapter II of the Agreement, the United Nations provided to the Court a range of services and facilities, including reimbursable loans; payroll costs for staff assigned to work exclusively on matters pertaining to the Court; access to the United Nations System Electronic Information Acquisition Consortium; field security services; audio and visual services; broadcast and conference support services; communications, fuel and other miscellaneous services; utilities; travel and transportation services for Court personnel; logistics and delivery services; provision of laissez-passer and certificates; mailing services; Language Proficiency Examination registration fee; Close Protection Officer course; malicious acts insurance policy and review of the Financial Disclosure Programme of the Court's key personnel. The services were all provided on a reimbursable basis in accordance with the Agreement and General Assembly resolution 58/318.

4. In the field of cooperation and judicial assistance, addressed in chapter III of the Agreement, the Organization provided extensive assistance to the Court in the period under review, especially in the form of access to the Organization's records and archives and the making available of United Nations personnel for interview by the prosecution in connection with situations before the Court and with situations under preliminary examination by the Prosecutor. No requests for testimony by United Nations personnel were received during the reporting period.

5. In addition to cooperation extended by the United Nations to the Court pursuant to the provisions of the Agreement, the United Nations continued to make every effort to refrain from any actions that would frustrate the activities of the Court and its various organs, including the Prosecutor, or undermine the authority of their decisions. Further to the guidance of the Secretary-General on contacts with persons who are the subject of arrest warrants or summonses issued by the Court (see A/67/828-S/2013/210), United Nations officials continued to implement the policy on essential contacts. In accordance with practice, the Legal Counsel informed the Prosecutor and the President of the Assembly of States Parties to the Rome Statute of any meetings with persons who are the subject of arrest warrants issued by the Court that were considered necessary for the performance of essential activities mandated by the United Nations.

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Item 74 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion of truth, justice, reparation and guarantees of non-recurrence**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, submitted in accordance with Human Rights Council resolution 36/7.

* A/73/150.

* The present report was submitted after the deadline in order to reflect the most recent developments.

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Summary

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, having taken up his functions in May 2018, presents his preliminary vision of four main lines of engagement with the General Assembly: (a) transitional justice, prevention and sustaining peace; (b) harnessing youth's creative agency for transitional justice; (c) accentuating the gender perspective in transitional justice efforts; and (d) the intersection of human rights (with a focus on economic, social and cultural rights) and the Sustainable Development Goals in the context of transitional justice.

I. Introduction

1. The present report is the first submitted by the new Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to the General Assembly, in accordance with resolution 36/7 of the Human Rights Council.

2. In the report, the Special Rapporteur presents his priority lines of engagement with the General Assembly, which should be read together with his first report submitted to the Human Rights Council (A/HRC/39/53), in which he described his approach to the discharge of the mandate and gave a preliminary outline of areas of interest.

3. The activities undertaken by the mandate holder from August 2017 to June 2018 are contained in the report of the Special Rapporteur to the Human Rights Council (A/HRC/39/53).

II. Priority lines of the Special Rapporteur's engagement with the General Assembly

4. On the basis of the foundational work accomplished and with a view to further enhancing the efforts of the mandate holder in relation to the General Assembly, the Special Rapporteur, who took up his functions in May 2018, presents herein his preliminary vision of four main lines of engagement in areas that are at the core of the recent work of the Assembly and the Security Council.

5. The areas, which are closely interlinked, pertain to the following issues:

- Transitional justice, prevention and sustaining peace
- Harnessing youth's creative agency for transitional justice
- Accentuating the gender perspective in transitional justice efforts
- The intersection of human rights (with a focus on economic, social and cultural rights) and the Sustainable Development Goals in the context of transitional justice

A. Transitional justice, prevention and sustaining peace

6. The Special Rapporteur intends to continue to contribute, from the perspective of the mandate, to the ongoing reflections in the area of prevention and sustaining peace.

7. The Special Rapporteur recalls earlier work undertaken by the mandate holder, such as a report in which he called for a substantive, comprehensive framework approach to prevention, giving content to the frequently referenced need to broaden the scope of and "upstream" prevention work (A/72/523); and two interlinked reports in which he elaborated on the (not so frequently employed) notion of guarantees of non-recurrence (A/HRC/30/42 and A/70/438).

8. The Special Rapporteur makes further reference to the joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence, prepared by the previous Special Rapporteur and the Special Adviser to the Secretary-General on the Prevention of Genocide (A/HRC/37/65).

9. Lastly, he highlights the work undertaken specifically to address the "challenges in weakly institutionalized post-conflict settings" (see A/HRC/36/50), which imply transitional justice contexts with weak State structures (see A/HRC/37/65), which account for an increasing part of the efforts of the mandate holder, and highlights the relevance of those challenges for the United Nations political main organs. He recalls that these situations vary significantly from the post-authoritarian context in which the model of transitional justice originally took shape (see A/HRC/21/46).

10. On the basis of that foundational work, and given the urgent need to improve the effectiveness of transitional justice efforts in these new contexts of application, the Special Rapporteur will prioritize the continued interaction with relevant United Nations organs, pertinent departments of the Secretariat and United Nations agencies, as well as regional organizations, in the implementation of his mandate.

11. The Special Rapporteur also underlines the significant work relating to the adoption and implementation of the twin resolutions of the General Assembly (resolution 70/262) and the Security Council (resolution 2282 (2016)), which followed from the review of the United Nations peacebuilding architecture in 2015.

12. The Special Rapporteur underscores that the twin resolutions include a "comprehensive approach to transitional justice" as a key component of the efforts to sustain peace. In paragraph 12 of the twin resolutions, it is stressed that "a comprehensive approach to transitional justice, including promotion of healing and reconciliation, a professional, accountable and effective security sector, including through its reform, and inclusive and effective demobilization, disarmament and reintegration programmes, including the transition from demobilization and disarmament to reintegration, are critical to consolidation of peace and stability, promoting poverty reduction, rule of law, access to justice and good governance, further extending legitimate State authority, and preventing countries from lapsing or relapsing into conflict".

13. In that regard, the Special Rapporteur would like to make the following remarks, opening avenues for future work under the mandate. First, he notes that the "comprehensive approach" — in the understanding of the two resolutions — is meant to include the "promotion of healing and reconciliation", two themes that have been recurrent in Security Council resolutions in recent years.[1] Against this background, he indicates that, in his thematic and country-related work, he will thoroughly study the conceptualization of these two recurrent themes, also comparing them with their usage in practice, and examine issues surrounding and intersecting with them.

14. Furthermore, he points out that in the wording of the twin resolutions there is an emphasis on reform efforts towards a professional, accountable and effective security sector, on the one hand, and inclusive and effective demobilization, disarmament and reintegration programmes, on the other, with a view to preventing countries from lapsing or relapsing into conflict.

15. In that connection, the Special Rapporteur recalls that over the years the transitional justice debate has gradually shifted, such that the concept of "guarantees of non-recurrence" went from covering primarily institutional reforms to integrating initiatives at the society and individual levels (see A/HRC/30/42 and A/HRC/39/53). Nevertheless, he notes that the approach reflected in the resolutions of the General Assembly and the Security Council remains focused on the institutional level (that is, mainly security sector reform in a broader sense).

[1] For example, Security Council resolutions 2406 (2018), 2327 (2016), 2290 (2016), 2252 (2015), 2241 (2015) and 2223 (2015) on South Sudan; and resolutions 2333 (2016), 2239 (2015) and 2190 (2014) on the situation in Liberia.

16. In many contexts, however, the international community, including the United Nations, regional actors and others, has come to realize that institution-centred transitional justice and peacebuilding initiatives — on their own — have hardly ever reached the grass-roots level to the extent required to significantly contribute to processes of achieving increased social cohesion. Such an approach, as witnessed in several instances, has significant potential to refuel conflict in the absence of progress in adjacent areas at the society and individual levels, which need to complement — and sustain — any institutional reform.

17. Furthermore, the Special Rapporteur intends to thoroughly study throughout his term the inclusion of transitional justice measures, or components thereof, in the context of prevention, human rights and transitional justice in Security Council resolutions relating to a number of countries in conflict and post-conflict settings.

18. In that connection, he observes with interest the most recent use of the term "holistic transitional justice measures", which comprises accountability, truth-seeking and reparations.[2]

19. The Special Rapporteur also notes the references to specific accountability measures pertaining to criminal justice initiatives in different forms and with different arrangements.[3]

20. Regarding the pillar of "guarantees of non-recurrence", he preliminarily observes an emphasis on institutional reform, mainly encompassed through security sector reform, as being among the tasks of the respective peace missions.[4] Furthermore, some resolutions contain references to specific ongoing or envisaged truth-seeking initiatives,[5] while few references pertain to reparation.

B. Harnessing youth's creative agency for transitional justice

21. The Special Rapporteur will make concerted efforts to study the topic of leveraging the creative agency of young people for transitional justice processes, both conceptually and in practice, mainly through country visits and other country-related work.

22. The Special Rapporteur would like to take the opportunity to introduce a number of preliminary remarks in relation to this issue.

23. As indicated in Security Council resolution 2250 (2015) on youth and peace and security,[6] today's generation of youth (persons aged 18–29 years, as defined in the resolution) is the largest the world has ever known and young people often form the majority of the population in countries affected by armed conflict.

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[2] See Security Council resolution 2406 (2018), para. 31; and resolution 2327 (2016), para. 29, on South Sudan.

[3] See most recently, for example, resolution 2406 (2018), para. 28, on South Sudan (Hybrid Court for South Sudan); and resolution 2399 (2018), preamb. para. 15, on the Central African Republic (Special Criminal Court).

[4] See most recently, resolution 2409 (2018), para. 37 (ii), on the Democratic Republic of the Congo.

[5] See, for example, resolution 2364 (2017) para. 20 (a) (iii), on Mali (Truth, Justice and Reconciliation Commission); and resolution 2327 (2016), para. 26, on South Sudan (Commission for Truth, Reconciliation and Healing, as stipulated in the Agreement on the Resolution of the Conflict in the Republic of South Sudan).

[6] In its resolution 2250 (2015), the Security Council recognized the contribution of youth in the prevention and resolution of conflicts and warned against the rise of radicalization and violent extremism among youth.

24. That observation is in stark contrast, however, to the yet underutilized agency and role that youth are capable and willing to take on to contribute to transitional justice measures and prevention initiatives.

25. While young people have often been key actors in challenging injustice and its enabling structures, and human rights violations specifically, and in pushing for societal renewal in the aftermath of conflict and/or repression, they continue to face a number of limitations in their engagement with and for transitional justice measures.

26. Frequently, they are kept at bay in the debates and processes — inside and outside State entities — about policies and strategies on how to deal with the past and ensure non-recurrence of violations.

27. The approach that has typically been applied has been to create specific opportunities, mainly in the form of predetermined forums or activities for the engagement of youth. Those methods of engaging young people have often taken the form of capacity-building and technical assistance, with a focus on developing mechanisms to allow young people to introduce their ideas and vision into a pre-existing process that has already taken shape.

28. While the dedicated efforts to achieve some sort of youth involvement and participation are to be welcomed, it should be noted that the creative potential of youth to proactively contribute to designing and shaping transitional justice efforts is likely to be partly foregone with such an approach.

29. The Special Rapporteur preliminarily indicates that a more cohesive and genuinely inclusive approach needs to be envisaged in order to effectively catalyse the crucial agency of young people in their engagement for lasting peace and their contributions towards justice and reconciliation. The aim would be to set up structures and design approaches that enable youth to play a central role as agents of change in and for transitional justice processes.

30. A truly inclusive approach has great potential to leverage more of the constructive energy of young people, who, in addition to being generally future-oriented, stand to gain a lot from transitional justice measures, are open to new ideas and innovation and make effective use of media and technology to amplify voices and advance change.

31. Dedicated efforts to foster inclusion from the outset are paramount, as there is a strong likelihood that exclusion will create an environment that drives young people to resort to violent means as they are — and feel — excluded from important processes determining their future. This issue was captured prominently in resolution 2419 (2018), in which the Security Council followed up on resolution 2250 (2015) and stressed that youth's "marginalization is detrimental to building sustainable peace and countering violent extremism".

32. In that connection, in its resolution 2250 (2015), the Security Council urged Member States "to consider ways to increase inclusive representation of youth in decision-making at all levels ... for the prevention and resolution of conflict, including institutions and mechanisms to counter violent extremism, which can be conducive to terrorism ...". In resolution 2419 (2018), the Council makes explicit reference to the inclusive representation of youth in relation to the negotiation and implementation of peace agreements.

33. In its resolution 2250 (2015), the Security Council requested the preparation of an independent progress study on youth and peace and security. The resulting recommendations were put forward as "the starting point of large-scale transformation", offering a framework for action to support young people's innovation and build sustainable peace (A/72/761–S/2018/86, para. 74). The

recommendations were grouped into three strategies: (a) investing in the capacities, agency and leadership of young people; (b) from exclusion to meaningful inclusion; and (c) national, regional and global partnerships for youth and peace and security (ibid., paras. 59–73).

34. Furthermore, the fact that in a number of countries cases of gross violations in the past predate the current generation of youth also poses specific challenges. What can be observed at times is a lack of even basic information about a country's violent past. In several cases, it is neither a topic of public discourse nor part of the school curriculum. Narratives about these periods are then often transmitted through the family and communities — a means through which opposing narratives are perpetuated and likely to contribute to renewed violations in the future.

35. Given the lack of reliable information, it becomes evident that youth can easily be carried away by incorrect accounts, misused for partisan or other purposes or co-opted by different sides. In the absence of available accurate factual information, the intergenerational effect of violence and gross violations tends to be amplified in magnitude, at times with an impact for several generations.

36. Against this background, and as already highlighted in the report to the Human Rights Council (A/HRC/39/53), the reform of education (both formal and informal), in particular history education, and of educational approaches is crucial to addressing the perpetuation of contradictory narratives, which with time heighten the risk of refuelling conflict and enabling gross violations.

37. This concern was captured by resolution 2419 (2018), in which the Security Council stressed the need for access to education by all, including marginalized youth, and highlighted the protection of educational institutions as spaces free from all forms of violence.

38. Beyond educational reform, the transmission of memory has a crucial role in attempting to break the cycles of violence. Again, the aim would be to proactively take advantage of the creative potential of youth, including young artists and other actors engaged in memorialization and cultural initiatives, in the shaping of strategies to redress violent pasts.

C. Accentuating the gender perspective in transitional justice efforts

39. Complementary to the Special Rapporteur's intention to place continued and reinforced emphasis on the gender perspective (see A/HRC/39/53) in the implementation of his mandate, in accordance with Human Rights Council resolutions 18/7, 27/3 and 36/7, he plans to accentuate the gender perspective in relation to transitional justice efforts, in the context of prevention, in his engagements with the General Assembly.

40. Building on the landmark Security Council resolution 1325 (2000), in which Member States were urged to increase women's representation at all decision-making levels in institutions and mechanisms for the prevention, management and resolution of conflict, as well as relevant successive Security Council resolutions, in particular resolution 2242 (2015), and the global study on the implementation of resolution 1325 (2000) carried out in 2015,[7] the Special Rapporteur plans to study and address in his activities the main observations and recommendations of the study, as they pertain to his mandate.

[7] Radhika Coomaraswamy, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325* (United Nations Entity for Gender Equality and the Empowerment of Women, 2015).

41. The global study sets out how the empowerment of women contributes to strengthening peace operations, attaining peace agreements, improving humanitarian assistance, countering violent extremism and achieving sustainable peace. It is also emphasized that the importance of national and communal healing as part of holistic justice and accountability processes, including truth-seeking, reconciliation, memorialization and reparations, is increasingly understood by the international community and Member States.[8]

42. At the same time, it is observed in the study that only initial steps have been taken in terms of progress on a number of the topics referred to in the successive resolutions. Those areas relate to the participation of women as negotiators in formal peace processes; the formulation of inclusive national action plans on women and peace and security; the very low rate of prosecutions for sexual violence, in particular at the national level; the rise of violent extremism that has led to a real threat to the lives of women, a cycle of militarization and significant obstacles for women peacebuilders; and the still small amount of financial aid provided to fragile States with regard to gender issues.

43. In his forthcoming thematic and country-related work, the Special Rapporteur will follow up on the topics of the various resolutions and the recommendations of the global study, as they pertain to the specific context of his mandate. In that connection, he also plans to establish regular working relations with the Informal Expert Group on Women and Peace and Security, which was established pursuant to Security Council resolution 2242 (2015) to facilitate a more systematic approach to women and peace and security in the Council's own work and to enable greater Council oversight and coordination of the implementation efforts of the United Nations system.

44. In conjunction with resolution 1325 (2000), successive resolutions and the global study, and in the spirit of cooperation with other human rights mechanisms, notably the United Nations treaty bodies, the Special Rapporteur would like to draw attention to general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations of the Committee on the Elimination of Discrimination against Women.

45. In its general recommendation, the Committee stressed that all areas of concern addressed in those resolutions found expression in the substantive provisions of the Convention, and therefore reiterated the need for a concerted and integrated approach that placed the implementation of the Security Council agenda on women and peace and security into the broader framework of the implementation of the Convention and its Optional Protocol (general recommendation No. 30, para. 26).

46. The Committee placed the onus on State parties to focus on the prevention of conflict and violence, and highlighted that doing so entailed, inter alia, effective early warning systems, preventive diplomacy and mediation, and efforts that address the root causes of conflict. The Committee highlighted that there was a correlation between the increased prevalence of gender-based violence and discrimination and the outbreak of conflict, stating that rapid increases in the prevalence of sexual violence could serve as an early warning of conflict. It concluded, therefore, that efforts to eliminate gender-based violations also contributed in the long term to preventing conflict, its escalation and the recurrence of violence in the post-conflict phase (ibid., para. 29). The Committee expressed concern that conflict prevention efforts often excluded women's experiences as not relevant for predicting conflict (ibid., para. 30).

[8] Ibid., executive summary.

47. Lastly, the Special Rapporteur would like to recall that the Committee drew attention to the importance of participation. It underscored that while women often took on leadership roles during conflict as heads of households, peacemakers, political leaders and combatants, their voices were silenced and marginalized in post-conflict and transition periods and recovery processes. Consequently, the Committee emphasized the difference that could be made by including a critical mass of women in international negotiations, peacekeeping activities and at all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation and peace negotiations, as well as in the criminal justice system (ibid., para. 42).

48. This concern links up with one of the main issues of interest to the Special Rapporteur, as outlined in his recent report to the Human Rights Council, namely victim participation in transitional justice measures and the question of ownership (A/HRC/39/53, paras. 64–66).

49. On the basis of the aforementioned areas, and in the spirit of cooperation, the Special Rapporteur will strive to apply a more pronounced gender perspective to achieve synergies between the framework of the Security Council resolutions on women and peace and security, the human rights system, in particular with regard to the Convention on the Elimination of All Forms of Discrimination against Women, and his mandate to work towards the congruent implementation of the aforementioned main concerns, with the participation of civil society.

D. The intersection of human rights (with a focus on economic, social and cultural rights) and Sustainable Development Goals in the context of transitional justice

50. Gross human rights violations and serious violations of international humanitarian law are often fuelled by, and frequently cause, developmental shortfalls. As indicated in his report to the Human Rights Council (A/HRC/39/53), during his mandate, the Special Rapporteur intends to address the intersection between transitional justice, economic social and cultural rights and development, an area that is being increasingly explored, but demands sustained attention from scholars, experts and the international community.

51. In 2009, the Human Rights Council, in its resolution 12/11 on transitional justice and human rights, adopted by consensus, emphasized the importance of addressing "violations of all human rights, including economic, social and cultural rights".

52. In March 2010, the Secretary-General issued a guidance note on the United Nations approach to transitional justice. In the note, he underscored that transitional justice should seek to "take account of the root causes of conflicts and repressive rule, and address violations of all rights, including civil, political, economic, social and cultural rights".[9]

53. In the last decade, several experts in the field of transitional justice have pointed out how violations of economic, social and cultural rights can spark tensions that lead to conflict and repression, for example, where a conflict situation has resulted from a previous failure to fulfil the economic and social rights of certain groups. Or, conversely, how such contexts can lead to violations of those rights, for example, where a conflict has resulted in the deliberate devastation of the infrastructure necessary to realize economic and social rights.

[9] See United Nations, "Guidance note of the Secretary-General: United Nations approach to transitional justice", March 2010, sect. A (9).

54. Whether seen as deep-rooted causes of a conflict, or more largely as violations that contribute to triggering conflict or violence, concerns relating to economic, social and cultural rights have featured prominently in recent transitions. Several commentators have underscored how the Arab Spring was fuelled in some countries by economic and social demands, such as that of Mohamed Bouazizi, who self-immolated in protest against the confiscation of his source of livelihood, spearheading protests in Tunisia; or as reflected in the motto of the 2011 revolution in Egypt, which called for "bread, freedom, social justice".[10] Others have pointed to peaks in food prices coinciding with the timing of riots and protests in North Africa and the Middle East in 2008 and 2011; or to the successive droughts in the north-eastern region of the Syrian Arab Republic, and the subsequent migration of 2 million farmers to urban areas, as one of the catalysts for the country's civil war.[11]

55. Truth commissions had been criticized in the past for narrowly focusing on civil and political rights abuses. However, in more recent times, truth commissions have begun to examine economic and social rights and broader socioeconomic issues. For example, the Truth, Reception and Reconciliation Commission in Timor-Leste identified the violations of the rights to health, education and to an adequate standard of living as root causes of the conflict. Similarly, the Truth and Reconciliation Commission in Sierra Leone pointed to the greed and corruption that reduced the population to poverty, thereby "violating their economic, social and cultural rights",[12] as the underlying cause of the conflict. In Peru, the Truth and Reconciliation Commission described how the conflict was prompted by a political and acute economic crisis underpinned by hyperinflation. It further noted that the conflict, in turn, led to the massive destruction of the productive infrastructure and the loss of social capital and economic opportunities, indicating that the areas most affected by the conflict went on to occupy the lowest rankings in the poverty and human development indices.[13]

56. In the wake of conflict, unresolved problems such as disputes over land or property, systemic discrimination, pervasive corruption, lack of access to essential services or unequal distribution can prevent durable solutions, threatening peace and undermining transitional justice efforts. An effective strategy to achieve sustainable peace must address holistically the underlying causes of conflict through an array of public policy measures.

57. The indivisibility, interdependence and interrelated nature of economic, social, cultural, civil and political rights is a well-established element of international human rights law, and its relevance in transitional justice contexts cannot be overemphasized. In the guidance note, the Secretary-General reflects on this, noting that to be effective and sustainable, transitional justice efforts should seek to address violations of all human rights in an integrated and interdependent manner, including by addressing violations of economic and social rights in the work of truth commissions, criminal courts, reparation programmes, constitutional and legislative reforms, peace agreements and victims' access to services.[14]

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[10] Evelyne Schmid and Aoife Nolany, "'Do no harm'? Exploring the scope of economic and social rights in transitional justice", *International Journal of Transitional Justice*, vol. 8, No. 3 (November 2014), p. 363.

[11] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Early warning and economic, social and cultural rights", 2016, p. 6.

[12] Ibid., p. 5.

[13] "Final report of the Truth and Reconciliation Commission of Peru", general conclusions, paras. 96 and 154, available at www.cverdad.org.pe/ingles/ifinal/conclusiones.php.

[14] United Nations, "Guidance note of the Secretary-General: United Nations approach to transitional justice", March 2010, sect. C (1).

58. While transitional justice processes may not be positioned to provide a response to broader socioeconomic issues, they can certainly be aimed at addressing the shortfalls in the realization of economic, social and cultural rights that have prompted or stem from conflict or repression. Effective transitional justice processes must seek to redress these deficiencies from a human rights-based approach. These processes should take into account the full range of obligations stemming from these rights, considering existing legal standards in the development of transitional justice processes. Addressing the roots of violence through the lens of economic social and cultural rights can constitute a powerful preventive tool and a guarantee of non-recurrence.

59. During the discussions on the post-2015 development agenda, the mandate holder made a case for firmly anchoring justice and rights-related concerns in the new development agenda (A/68/345), underscoring that justice, security and development cannot be promoted individually, at the expense of the others. Transitional justice and human development aim at building just, peaceful and inclusive societies, and therefore complement and mutually reinforce each other.

60. Transitional justice measures can contribute to mitigating developmental deficiencies by providing recognition of rights, fostering individual and institutional trust and building positive social capital (ibid., summary).

61. Moreover, as noted in the most recent report of the Special Rapporteur to the Human Rights Council (A/HRC/39/53), comprehensive transitional justice measures can contribute to the fulfilment of the Sustainable Development Goals pertaining to the economic and social rights sphere, such as ensuring inclusive and equitable quality education (Goal 4); achieving gender equality and empowering all women and girls (Goal 5); and reducing inequality within and among countries (Goal 10).

62. This constitutes an area of interest for the future substantive work of the mandate holder, in particular, exploring how to undertake transitional justice processes that are responsive to the socioeconomic needs of the population that they aim to assist, in terms of both developmental requirements and the realization of rights.

63. In some resolutions, the Security Council has addressed the linkages between conflict, development and poverty eradication; however, it has not referred explicitly to the realization of economic, social and cultural rights. For example, in preambular paragraph 12 of resolution 2282 (2016) on post-conflict peacebuilding, the Council emphasizes the importance of a comprehensive approach that addresses the root causes of conflict and promotes the rule of law, sustainable development, economic growth and poverty eradication. Similarly, acknowledging the role that socioeconomic problems played in the conflict in Sierra Leone, in paragraph 1 (a) (i) of resolution 1620 (2005), the Council pressed for building State capacity to address the root causes of the conflict, provide basic services and accelerate progress towards the Millennium Development Goals through poverty reduction and sustainable economic growth.

64. To reinforce the links between these elements, the Special Rapporteur intends to undertake a practice-oriented study on the effectiveness of the measures under the mandate in redressing violations of economic, social and cultural rights and contributing to the development of the communities affected by gross human rights violations.

III. Conclusions and recommendations

65. Underlining the importance of the twin resolutions of the General Assembly (resolution 70/262) and the Security Council (resolution 2282 (2016)), in which a "comprehensive approach to transitional justice" is emphasized as a key component of efforts to sustain peace, the Special Rapporteur expresses his intention to thoroughly study the inclusion of transitional justice measures, or components thereof, in the context of prevention, human rights and transitional justice, in Security Council resolutions relating to a number countries in conflict and post-conflict settings.

66. In that connection, he also intends to work on the conceptualization of the areas of promotion of healing and reconciliation, two themes that have been recurrent in Security Council resolutions in recent years, also comparing them with their usage in practice, and to examine issues surrounding and intersecting with them.

67. Referring to Security Council resolutions 2250 (2015) and 2419 (2018) on youth and peace and security, and highlighting, on the one hand, the yet underutilized agency and role that youth are capable and willing to take on, and the number of limitations that youth face in their engagement with and for transitional justice measures, on the other, the Special Rapporteur indicates his aim to undertake a study on the question of how to more effectively harness the creative agency of youth for transitional justice processes. In that connection, he intends to examine possible structures and approaches designed to enable youth to play a central role as agents of change in and for transitional justice processes.

68. It is the Special Rapporteur's conviction that a more cohesive and genuinely inclusive approach would more successfully harness the creative potential of young people in their engagement for lasting peace and their contributions towards justice and reconciliation. Furthermore, efforts to foster inclusion from the outset are also paramount, as there is a strong likelihood that exclusion will create an environment that drives young people to resort to violent means as they are — and feel — excluded from important processes determining their future.

69. With the aim of accentuating the gender perspective in transitional justice efforts, the Special Rapporteur intends to follow up on the topics contained in the landmark Security Council resolution 1325 (2000) on women and peace and security, and successive resolutions, as well as the recommendations of the global study on the implementation of resolution 1325 (2000) of 2015, as they pertain to the mandate, in his forthcoming thematic and country-related work.

70. Drawing attention to general recommendation No. 30 of the Committee on the Elimination of Discrimination against Women, in which it concluded, inter alia, that women's voices remained silenced and marginalized in post-conflict and transition periods, he plans to shed light on possible avenues to address this shortcoming. The Committee also stresses that efforts to eliminate gender-based violations also contribute in the long term to preventing conflict, its escalation and the recurrence of violence in the post-conflict phase. It is with this perspective in mind that the Special Rapporteur will liaise frequently with the Committee on these two areas in the course of his mandate.

71. The Special Rapporteur reiterates that — whether seen as deep-rooted causes of a conflict or more broadly as violations that contribute to triggering conflict or violence — concerns relating to economic, social and cultural rights have featured prominently in recent transitions. In particular in the wake of conflict, there is significant potential for disputes over land or property, systemic